Supreme Court, U.S.
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NO. 94-

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT A. LESLIE, Petitioner

v.

WILLIAM C. LESLIE, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT FOR THE COLORADO STATE SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

ROBERT A. LESLIE
Consul for petitioner
In Propria Persona
243 Berkeley Avenue
Irvine, Calif. 92715.
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QUESTIONS FOR REVIEW

1. Is the denial of a jury trial in a contested probate action, specifically provided for by Colorado statute, on demand, a violation of Amendment VII of the Federal Constitution.

2. Is the summary dismissal of a declarative relief action, seeking to revoke probate, demanding a jury trial, without notice or hearing, without writing a judgment, in violation of Colorado Law, a denial of due process under Constitution Amendment XIV.

3. Is the taxing of opposing counsel's attorney fees and costs, to appellant in an action to revoke probate, questioning the validity of a will, contrary to statute and case law, and the decision of other courts, a violation of Federal constitution Amendment XIV.

4. Is a judgment of dismissal, rendered

by a probate judge, who has expressed strong bias in previous rulings, in violation of statute and case law in Colorado, a violation of Amendment XIV of the Federal Constitution.

5. Does a Colorado probate court have the jurisdiction to enforce promissory notes executed in California, when the statute of limitations for enforcement of those notes has expired.

6. Does a Colorado probate Court and appellate courts have the legal authority to tax costs and opposing counsel's attorney fees to appellant, in Federal Court actions in violation of the decisions of these courts.

7. Is the legal concept of Equitable Estoppel by fraudulent concealment, in which the witnesses to the will, perjured themselves they observed the signing of the will applicable to a probate proceeding.

8. Is C.R.S. 15-10-401 constitutional which requires a will contestant make a personal appearance in a Colorado Court ten days after notice is mailed to his home.

PARTIES TO THE PROCEEDING

Bradley, Campbell, Carney and Madsen, 1717 Washington Avenue, Golden, CO 80401-1934.

Honorable Morris W. Santead Jr., Boulder County District Court, P. O. Box 4249, Boulder, Colorado, 80306-4249.

COURT OF APPEALS, STATE OF COLORADO, 2 East 14th Avenue, Denver, CO 80203

Colorado State Supreme Court, 2 East 14th Avenue, Denver, Colorado, 80203.

Colorado State Supreme Court, 2 East 14th Avenue, Denver, Co. 80203.

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COLORADO STATUTES

15-10-102 To promote a speedy and efficient system of managing and protecting the estates of protected persons so that assets may be preserved for application to the needs of protected persons and their dependents.

15-10-105-this code is a general act intended as a unified coverage of the subject matter, and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

15-10-401 . . . Notice shall be given: By mailing a copy thereof at least ten days before the time set by the hearing by certified, registered or by ordinary first class mail addressed to the person being notified at the post office address given in his demand for notice, if any, or at his office or place of residence if known; or (b) by delivering a copy thereof to the person being notified personally, at least ten days before the time set for the hearing, . . . A18

15-12-403 (1)(a) Upon commencement of a formal testacy proceeding the court shall fix a time and place of hearing. Notice shall be given in the manner prescribed in 15-10-401 . . .

15-12-406 (2) If the will is self proved, compliance with the signature and other requirements of execution

is presumed subject to rebuttal without the testimony of any witness upon filing the will and the acknowledgment unless there is proof of forgery or fraud affecting the acknowledgment or affidavit.

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GROUNDS FOR JURISDICTION

The Supreme Court of the State of Colorado, meeting in Banc, denied the petition for review, being the

highest court in Colorado, January 17, 1995. Since this decision is in conflict with the Federal Constitution Amendment XIV, Case and Statutory law this case is submitted for your review to secure uniformity of decision. The jurisdiction of the US Supreme Court to review decisions of the state courts is codified in 28 USC §1257 which reads as follows: (3) by writ of certiorari, where the validity of a treaty or statute of the United States is drawn into question, or the validity of a state statute, is drawn into question on the grounds of it being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege, or immunity is specifically set up or claimed under the constitution, treaties, or statutes or commission held or authority exercised under the United States.

CONSTITUTIONAL PROVISIONS

Federal Constitution Amendment VII: In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact, tried by jury, shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

Federal Constitution Amendment XIV: Nor Shall any state, deprive and person of life, liberty, or property without due process of law; nor to deny any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The testator, Robert Wilson Leslie died on August 24, 1989. Petitioner, his son, was sent a copy of his father's will, which appeared to be fraudulent, because the testators initials did

not appear on the first four pages of the will in conformity with the declaration on the final page of the will, and the attestation clause of the will; because the provisions of the will conflicted with the testator's notarized declaration filed three months prior to his death, and for other reasons.

An objection to probate was filed prior to the probate hearing. Appellant was not present, because of having received only six days notice, which was not sent through the postal system contrary to C.R.S. 15-10-401. The court held that notice was received 10 days prior to the hearing by my "agent," through the postal system, notwithstanding the fact petitioner submitted an affidavit from the postmaster, the letter did not go through the postal system contrary

to C.R.S. 15-10-102(1)(c) and that petitioner had no "agent." Petitioner was denied a hearing on the issue of notice, and a jury trial because of this lack of a personal appearance. This denial of a jury trial was unsuccessfully appealed to the Colorado Supreme Court three times in 93 CV 1470, 93 CA 185, 94SC254; 89 CA 2010, 91SC45; and 93 CV409. (APP 12D,48D)

Actions were filed in the Federal District Courts of Oklahoma and Colorado because of this denial of due process, and because the legal department of the Phillips Petroleum Company refused to release exemplars of the testator's signature in 1968, the only available source of this information, unless an action was filed in Oklahoma. Interrogatories were sent which defendant's refused to answer; the scrivener filed an answer to the Federal

Action in Oklahoma. The federal lawsuits were dismissed for lack of jurisdiction before a motion to compel a response could be obtained.

In the meantime, the probate judge, The honorable Morris Santead, approved the final distribution, and expressed strong disapproval of appellant's legal actions, awarding attorney fees and costs to the opposing party, contrary to case law and decisions of these courts, notwithstanding the fact, that he had not even read the pleadings.

Because petitioner was denied a jury trial on the issue of the validity of the will in violation of Federal Constitution Amendments VII and XIV, an action for declarative relief was filed at the Boulder District Court CV 1470. Opposing counsel filed a motion to dismiss and to strike which was opposed by appellant. No hearing

date was set six weeks later and a telephone inquiry was made to Judge Santead's office, regarding case 93CV 1470 to his secretary. Petitioner was informed the presiding judge was ill, that judge Santead was covering for him, and that he dismissed CV 1470, which demanded a jury trial on the validity of the will, (APP 5D, para. 2) and that both Judge Santead and the presiding judge refused to write a judgment; The clerk instructed me to write a judgment. A judgment was written addressing the concerns, regarding the lack of a jury trial, and denial of due process. which Judge Santead refused to sign, dismissing 93CV 1470 without entering a judgment (APP 8D); substituting instead, his final distribution order, of February 24, 1993, instructing appellant to mail a copy to opposing counsel, as

his order dismissing 93 CV 1470, again awarding attorney fees and costs to appellee, violating the law. (APP 9D) Incidentally, in California Courts, a Judge is not allowed to sit on a case, if he has already given a judgment in another court, because he is assumed to have bias.

Since there was no written judgment of dismissal, a reconsideration motion was impossible because there was nothing to reconsider, and was also contrary to the rules of the court, since this must be done within fifteen days of the entry of judgment, even though petitioner was not notified. The appellate court recognized this dismissal, contrary to the rules of court, and faulted petitioner for failing to file a reconsideration motion, which was also contrary to the rules of court mentioned in the

preceding paragraph. (APPENDIX 12C, line 13, 46D line 1-20).

Reconsideration is not a legal requirement for an appeal. The bias shown in the two distribution orders, rendered a reconsideration petition extremely unlikely to be successful, especially since Judge Santead refused to sign a judgment or provide one of his own. This dismissal was unsuccessfully appealed to the Colorado Supreme Court in 93CV1470,93 CA0185; 93CA409, 94 SC 515. (APP 47D). Judge Santead also awarded appellant's promissory notes against the estate, even though they were executed in California, outside the jurisdiction of the court and the statute of limitations had expired. This was unsuccessfully appealed to the Colorado State Supreme Court in 93 CA 409, 94SC 565. (APPENDIX 16D-17D)(APPENDIX 62D).

REASONS FOR GRANTING

PETITIONER DENIED JURY TRIAL

1. Trial by jury, a common law right, is guaranteed under amendment VII of the Federal Constitution, and by Colorado Statute and Case law.

Federal Constitution Amendment VII states," In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . ." Colorado Gen. stat. §3508 (Mills' Ann.St §4659 prescribes the only procedure by which the contest of a Will may be originally brought in the district court, and that an issue at law shall be directed whether the writing in question be the last will of the testator or not, to be tried by a jury, Clough v Clough 59 P 736, 27 Colo 97.

Colo. 1961. Either party on appeal from the county court in which the

case is tried to the court is entitled to a jury trial in the district court if demand for a jury trial is made within a reasonable time prior to trial, C.R.S. '53 37-6-13; rules of Civil Procedure, Rules 38(a, b) 40. Rupp v Cool, 147 Colo. 18, 362 P.2d 396. **It is clear that in a proper case a jury trial may be had in an action brought under a declaratory judgment rule,** Baumgartner v. Schey, 143 Colo.373 P.2d 375(1960).

A jury trial was requested in his MOTION TO REVOKE PROBATE (Appendix 25B, his Supreme court Appeal (1B); his Declarative Relief Action 92CV1470; in his OPPOSITION TO THE MOTION TO STRIKE AND DISMISS (APPENDIX 56C) APPELLANT'S CLOSING BRIEF (APPENDIX 37C, 5D, 12D); Yet, the Colorado Courts violated petitioner's due process rights under the Federal constitution amendment

VII, and XIV due process and equal protection clauses, since Colorado statute and Case Law provides for a Jury trial on demand, regarding the issue of the validity of the will.

DISMISSAL VIOLATED COURT RULES

2. Judge Santead's dismissal of CV1470 was in violation of C.R.C Rule 58 which states," Upon a decision by the court, the court shall promptly prepare, date and sign a written judgment and the clerk shall enter it on the register of actions as provided in rule 79(a). The effective entry of judgment shall be the date set forth in the written judgment." This was not done. Some four weeks after the date of judgment, no written judgment was entered in the record.

Petitioner only learned about the judgment, after calling Judge Santead's

office, some four weeks after it should have been entered, when petitioner was advised to write a judgment for Judge Santead's approval and signature.

DISMISSAL VIOLATES DUE PROCESS

This entry of judgment, without notice, prevented petitioner from submitting a petition for reconsideration, a denial of due process, and the equal protection clause of Federal Constitution Amendment XIV; and this prejudiced petitioner's appeal in 93 CA0185 (APPENDIX 12C line 13; 32D, line 21). "Read together, the rules provide that a motion for a new trial must be filed not later than 10 days following the notation for judgment in the trial docket's register of actions. In Re Gardinella, 190 Colo. 402, 547 P.2d 928 (1976).

Colorado State Law and Federal Law are identical regarding dismissal and

Summary Judgment. Defendant originally moved to dismiss on the pleadings, and has never filed any different motion. The order to dismiss is absolutely insupportable under rule 12. (APP 44D-45D) Under this rule, a defendant may make a motion to dismiss for failure to state a claim upon which relief may be granted Federal Rules of Civil Procedure 12 (b)(6). In addition, the rules provide that such a motion to dismiss shall be treated as one for summary judgment and disposed of as provided in rule 56. All parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Federal Rule of civil Procedure 12 (b). A complaint should not be dismissed for insufficiency unless it appears to a certainty that plaintiff

is entitled to no relief under any state of facts which could be proved in support of the claim. Ballon vs General Electric Co. 393 F2d 398.

Federal rule of Civil Procedure 12 (b)(6) is not applicable in this case, as plaintiff has clearly stated claims in the complaint upon which relief may be granted-that of equitable estoppel due to the perjured declaration of the notary and witnesses of the will, and the failure of execution of the will. Defendants motion to dismiss is based upon the theory that there is not any cause of action. Dismissal is precluded under Federal Rules of Civil Procedure rule 56. Since the court was improperly attempting to resolve fact issues, it should have gone under rule 56, but the dismissal is insupportable under that rule also. Crawford vs.

McLaughlin, 473 P2d. 725, 172 Colo. 366; Mabray v Williams, 291 P2d 677, 132 Colo. 523." Judge Santead committed an error in law dismissing 93CV1470, because there were two triable issue of fact, the validity of the will, and equitable estoppel (APP 8D). A court must decline to enter a summary judgment if there exists as genuine dispute over any material fact, Sewell v Public Service Co. of Colorado 832 P.2d n994 (Colo. App. 1991. (First National Bank v Lohman 827 P.2d 583 (Colo.) App.1992.) In considering a summary judgment motion, trial court must accept plaintiff's pleadings as true, even in the face of denial by moving party's pleadings. Norton v Leadville Corp, 43 Colo App. 527, 610 P.2d 1348(1979); Abramsen v Mountain States Tel. & Tel. Co., 177 Colo. 422, 494 P.2d 1287; Carter

v Thompkins., 133 Colo. 279, 294 P.2d 265.; Parrish v DeRemer, 117, Colo. 422, 494 P.2d 1287, and the allegation of a fraudulent will justifies a jury trial.

JUDGE SANTEAD'S BIAS

3. Judge Santead's preliminary and final order of distribution showed bias and disqualifies him from rendering a fair decision on 93 CV 1470 petition for declarative relief. Re. Murchison (1955) 349 U.S. 133, 75 S.Ct. 623, 99 L.ED 942 HELD: A judge may be disqualified in the broad sense of the term if he does not function in an impartial manner. Statements like, " 15.(APPENDIX D 72) There is ample precedent for burdening Dr. Robert A. Leslie's share of the estate with the litigation and administration expenses attribituable to his groundless and unsuccessful attempts to relitigate

the validity of his father's will." And, (APPENDIX D73) " The bank had administered the estate in good faith and, in particular, has acted in good faith in successfully resisting Dr. Leslie's appeals of this court's formal order of probate to the Colorado Court of Appeals, and the Colorado Supreme Court, and in successfully moving the United States District Court for the District of Colorado to dismiss Dr. Leslie's complaint in that court."; In his final distribution order, demonstrate this bias, especially since he had not read the pleadings before these courts.

ACTED IN EXCESS OF JURISDICTION

4. Judge Santead's determination that the Federal Actions were frivolous, taxing costs, and opposing counsel's attorney fees to petitioner, without reading the pleadings, and without

knowledge of the Federal Rules of Court, were in excess of his jurisdiction, as a probate judge in the Boulder Probate Court (D72 Para. #15) and in excess of the jurisdiction of the Court of Appeal in 93 CA 190. (APPENDIX 31D, paragraph 2, 36D). Where there is a rational basis grounded in law and evidence for plaintiff's claim, the trial court's finding that these claims were frivolous is not sustainable. Hart v Trinen Surplus Electronics Corp. 712. P.2d 491. It also violated the principal of comity, and the principal that, " The final power of the Federal Courts is to protect all who come before them relying on the rights guaranteed by the Federal constitution and established by the Judgments of the Federal Courts, Deposit Bank v Frankfort 191 U.S. 499,520 48 LEd, 276.

Also, Federal Judgments may be protected by the obligation of state courts not to discriminate against Federal Judgments, Crescent City Livestock Co. vs Butcher's Union Slaughterhouse 120 U.S. 141, 30 LEd. 614.

Federal Judgments may also be protected by "the final power of the Federal Courts to protect all those who come before them relying upon rights guaranteed by the Federal constitution and established by the judgments of the federal courts," Deposit Bank v Frankfort 24 S.Ct 154, 191 US 499, 520 L.ED588.

"It would be unthinkable to suggest that state courts should be free to disregard the judgments of federal courts." Williams Nat. Gas. Co v City of Oklahoma City, 890 F.2d 255,265 quoting Wright, Miller & Cooper,

Certiorari denied 106 S.Ct. 3236, 497 US 1003, 111 L.ED.2d 747.

SPEEDY PROBATE DENIES DUE PROCESS

The Colorado Court of Appeal argues," The general assembly promulgated the Colorado Probate Code for the basic purpose of promoting a "speedy and efficient system for settling the estate of the decedent and making distribution to his successors." (APPENDIX 13D, 40D) Section 15-10-102(1)(c), C.R.S. (1987 Repl. Vol. 6B); In Re Estate of Dire, 851 P.2d 271 (Colo. App. 1993)." This "speedy" probate is accomplished by denying petitioner his constitutional right to a jury trial, on the issue of the validity of the will (APP 5D) in violation of Federal Constitution Amendments VII, and XIV as pointed out in page 24A, and allowing petitioner only six days to prepare his case (APP 21D.

TAXING ATTORNEY COSTS AGAINST CASE LAW

The Colorado Court of Appeal States," As to whether the litigation and administration expenses attributable to the attempts of petitioner to challenge the will and its final distribution were appropriately charged against the petitioner's distributive share, there is no Colorado statutory or case law. However, we are persuaded by the cases from other jurisdictions that fees and expenses may be so collected."

This allegation is in conflict with the published case law: the honorable judge Santead, the brief of James Wade, and respondent's brief has failed to produce a single instance in statute or case law justifying the taxing of attorney fees and costs in a probate action questioning the validity of a will. The fallacy in the Colorado

Court of Appeal's position is elaborated on in Appellant's Opening Brief in 93 CA 409 in (APPENDIX 54D)," In the cited 26 cases in Appellant's Opening Brief, 93 CA 409, the losing party was awarded attorney fees and costs. In None of the cases cited by attorney Wade and Judge Santead, in the appellate briefs, or by the Court of Appeal, was there a question of law or of the validity of a will."

Webb vs First National Bank and Trust Co 487 N. E. 2nd, p713, citing Brown v Commercial National Bank of Peoria, 237 N. E. 567aff'd 247 N.E.2d. 894, cited by Judge Santead in 93 CV 1470 (APPENDIX D73) and cited by the court of appeal in 93 CA0185 (APPENDIX D35-D36) stated there was no basis to charge attorney's costs to only his share of the costs, because it was not vexatious, groundless, or

brought for harassment, and no justification exists for charging such costs. It cites Kerner v Peterson, 12 N. E. 2d. 884; Hamilton v Neilsen 678 F2d 709,714, which does not allow assessments of costs or charging attorney's fees against the unsuccessful party unless the claim was groundless or vexatious. In Patterson v Northern Trust Co. 122 N.E. 55, the Illinois Supreme Court held: An attorney's fee cannot be charged personally against a defeated plaintiff using trustee as beneficiary, absent statutory authority.

"Statute that provided for award of fees for services rendered to an estate by attorneys did not authorize imposition of personal liability upon the beneficiaries for the trustee's attorney fees." Wests F. S. A. §733.106.(3,4). Sanchez v Sanchez,

435 So. 2d 347. "An attorney's fee cannot be charged against a defeated plaintiff suing a trustee as beneficiary absent statutory authority," Patterson v. Northern Trust 122 N.E. 55. "3 Page on Wills § 26.148, at 355, "it is error for a court to tax attorney's fees against specific devisees or legatees." Etc.

PROMISSORY NOTES NOT ENFORCEABLE

5. Appellant disputes the probate court's determination that the unpaid promissory notes are enforceable pursuant to the judgment of the probate court December 21, 1991, and in taxing the promissory notes of appellant against his share of the estate, while not taxing William Leslie's promissory notes against his share of the estate.

This was objected to in letters to Mr. Wade and John Holt and in the opposition to distribution (APPENDIX

D79) and before the Court of Appeal in (APPENDIX 16D-17D). This was justified By attorney Wade by the expiration of the statute of limitations.

Petitioner's promissory notes are not enforceable for the same reason, and additionally because their enforcement is outside the jurisdiction of the Colorado Courts. The notes were signed in California and mailed to Oklahoma, and an action to enforce these notes must be commenced in California. **Colo. App. 1991** Unless there is a particular place of payment/performance for contract, venue is only proper in county where defendant resides or county where plaintiff resides if defendant is served in that county. Rules Civ. Pro., Rule 98(c)(1,2); App.Proc.,Rule 3. Resolution

Trust Corp. v. Parker, 824 P.2d 102.

No action has been commenced in the county where defendant resides. If such an action were commenced, it would be time barred by the statute of limitations. **C.C.A.Colo. 1945.** Generally, a negotiable instrument, payable on demand, becomes due immediately, and statute of limitations begins to run from its date of execution and not from the date of its demand. Gossard v Gossard 149 F2d. 111; Kirby v Bourg, 440 P.2d 151, 165 Colo. 500; Pepper v Hyman, 189 P2d 155, 117 Colo. 365. An action on a note is time barred after the lapse of six years from date of maturity of note. The court of appeal did not comment on these arguments although they were presented.

93CA0185 NOT RES JUDICATA

The Colorado Court of Appeal made an error in law when it declared

petitioners arguments res judicata (APPENDIX 13C) "Plaintiff challenged whether the will was properly executed in his earlier action, and is therefore, barred from raising it in this action." on two grounds: 1. These issues were not decided on their merits;(APPENDIX 23B) "The return card was signed on October 2, 1989, 10 days before the hearing. The motion to revoke probate is denied." The court of appeal states (APPENDIX 15C) "The determination of issues in probating a will is a determination on its merits." Glenn v Mitchel, 71 Colo. 394.(APP 21D) In petitioner's, case the probate was not decided on its merits, but because petitioner failed to make a personal appearance on six days notice, as pointed out on page 42 of this brief. In People of State of Cal. v F.C.C. 905 F.2d 1245 The Ninth Circuit Court

points out," Res judicata does not act as a bar, however when the party against whom the earlier decision is asserted did not have a 'full and fair' opportunity to litigate the claim.(APP 21D) Kremer v. Chemical Constr. Corp., 456 U.S. 461, 480-81 &n.22, 102 Sct., 1883, 1896-7 and n.22 72 L.Ed.2d 262 (1982) The United States Supreme Court pointed out in Montana v Unites States 440 US 147,153. Res judicata and collateral estoppel only apply when a final judgment is made on the merits.

C.R.S. 15-10-102 IS UNCONSTITUTIONAL

5. C.R.S. 15-10-102 (1)(c) is unconstitutional because it deprives will contestants of property without due process of law. Under this law an interested party is foreclosed from contesting a will unless a personal appearance is made 10 days after the mailing of the notice. He is not

required to receive the notice, and if, for any reason, the mail is delayed, his rights are foreclosed without notice or hearing.

A will contestant residing some distance from Colorado, certainly could not make a timely appearance, thus this law is unconstitutional under the equal protection clause of Federal Constitution Amendment XIV, because it discriminates against heirs residing outside of Colorado, restricting their right to travel.

Under the provisions of the act in ten days the petitioner must: 1. Study the will, 2. Submit it to as document examiner, 3. Receive his report, 4. Locate and interview the witnesses who signed the will, 5. Prepare a pleading indicating all areas of fraud in detail. [Any omissions cannot be corrected in future pleadings (APPENDIX

15C, 30D)]. 6. make a personal appearance. Failure to comply with any of these requirements proscribes an opportunity to be heard effectively denying him due process in Colorado, in the interest of a "speedy probate" (APPENDIX 13D, 40D.)

FEDERAL ACTION NOT FRIVOLOUS

The Colorado State Court of appeal notes on page 38D (APPENDIX) "In the Federal Court Action, the court set forth six grounds for dismissal, any one of which could justify the findings that the action was frivolous or groundless. The cumulative effects of the six grounds, would in a Colorado state Court most assuredly constitute grounds for a finding of groundless or frivolous litigation." This is a remarkable finding, considering that neither the federal dismissal order nor any Federal Court Pleading was

in the appellate record. It is also contrary to published case laws: A claim or defense is frivolous if the proponent can present no rational argument based on the evidence or law is support of that claim or defense, Western United Reality Inc. v, isaacs, 679 P.2d 1063 (Colo. 1984.); Hart & Trinen v. Surplus Electronics Corp., 712 p.2d 491 (1985); Merrill Chadwick Co. v October Oil Co. 725 P.2d 17 (1986). A copy of this dismissal order is in (APPENDIX 79D.) The order given four not six grounds for dismissal. Murray's Federal Practice was researched prior to filing the Federal action. It stated Federal Courts have the authority to withhold funds to enforce probate. Later, Federal policy became more restrictive regarding Federal Jurisdiction, and added the $50,000 requirement; this information

was unavailable at the law library at the time of filing the suit.

STATE ACTIONS NOT FRIVOLOUS

Contrary to the opinion of the Honorable Judge Santead, the arguments for revocation of probate are soundly based in statute, and case law; his summarily dismissal of petitioner's pleadings, without reaching their merits, and his uncritical acceptance of opposition's pleadings, with their erroneous interpretation of statute and case law, is a violation of petitioner's due process rights guaranteed in U.S. Constitution amendment XIV; Const., art 2 §25, 1967 perm. supp., C.R.S., 66-29-14. "Due process of law" affords a hearing before it condemns, and gives judgment only after trial. People v Max 198 P. 150,70 Colo. 100. Access to the courts of the United States is a constitutional

right guaranteed by due process clause of fifth and fourteenth amendments. U.S.C.A. Const. Amendments V, XIV; Silver v. Cormier, 529 F.2d 161; Jones v Hildebrandt, 550 P2d., Certiorari granted 429 U.S. 1061. Due process always implies hearing or trial and judgment. Const. art 2, §25. La Planta River & Cherry Creek Ditch Co. v. Hinderlider 25 P2d.187.

EQUITABLE ESTOPPEL

7. Equitable estoppel by fraudulent concealment provides that a defendant is estopped from exerting a statute of limitations defense if a defendants own misconduct prevented plaintiff from filing a suit in a timely manner applicable in the ninth circuit, as in California Law: Bell v Cooper 881 F2ds 257; Gomez v Great Lakes Division National Steel Corp. 803 F2d 250.

Generally, equitable estoppel is a

rule of justice which in its proper field prevails over all other rules and doctrine, and may be invoked to cut off rights or privileges conferred by statute, and constitutional rights may be effectively waived by conduct consisting of action or failure to act." Johnson v Neel, 229 P2d. 939, 115 Colo. 377. See also Griffeth v Wright 6 Colo. 248; Ralston Oil Co. vs. July Corp, 719 P2d. 22; Bastian v Martinez, 698 P2d. 1373. (Citations)

It is sufficient for the plaintiff to allege facts, which if proved, would constitute an equitable estoppel. Once properly alleged, the issue of equitable estoppel is to be tested through the trial process, as pointed out in the preceding citations.

CONCLUSION

This action is a will contest. Petitioner was denied a jury trial

on the issue of the validity of the will because a personal appearance was not made on six days notice contrary to C.R.S. 15-10-102 (1)(c) even though petitioner filed an objection to probate prior to the hearing. The judge determined notice was given by petitioner's "agent," even though petitioner had no "agent" and notification was not sent through the mail as required by this statute. No hearing was granted and this denial was unsuccessfully appealed to the Colorado Supreme Court. Petitioner believes Colorado Statute C.R.S. 15-10-102 (1)(c) is unconstitutional because it deprived petitioner of property without due process of law. Although probate is an equitable proceeding, the question of the validity of a will is a triable issue of fact

to be determined by a jury on request. The Colorado Courts have denied petitioner this right through two appeals to the Colorado Supreme Court in violation of "due process" rights guaranteed in Amendments VII and XIV of the Federal Constitution and statutory and Case Law. The probate judge expressed strong personal bias against petitioner for attempting to enforce those rights. The same probate judge dismissed petitioners action for declarative relief without notice or hearing and without writing a judgment because the presiding judge was ill. These courts have taxed court costs, and opposing counsel's fees to petitioner in his attempt to enforce these rights guaranteed by the Federal constitution in violation of compelling case law in all of the 28 cited cases. In addition the Colorado Courts have

enforced promissory notes executed in California, whose statute of limitations have expired in excess of their jurisdiction, in violation of states rights, and contrary to statutory law.

WHEREFORE, the petitioner prays judgment as follows: 1. For an order from your court submitting the issue of the validity of the will to a jury trial. 2. An order from your court directing that petitioners promissory notes executed in California are not enforceable in Colorado. 3. An order that legal fees be paid by the estate. 4. That C.R.S. 15-10-401 statute be declared unconstitutional. 5. Any further relief that to the court seems just.

VERIFICATION

I, Robert A. Leslie am the author of this petition. The information

contained therein is true of my personal knowledge. I declare under penalty of perjury the foregoing is correct.

Executed March 15, 1995, at Irvine, California.

Robert A. Leslie

Robert A. Leslie

In Pro per

FILED

(2) D41679 MAR 20 1995

OFFICE OF THE CLERK

OCTOBER TERM

NO. 94-

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT A. LESLIE, Petitioner

v.

WILLIAM C. LESLIE, Respondent

APPENDIX TO

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES SUPREME COURT

FOR THE COLORADO STATE
SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

ROBERT A. LESLIE
Consul for petitioner
In Propria Persona
243 Berkeley Avenue
Irvine, Calif. 92715.
714 8542246

SUPREME COURT STATE OF COLORADO 91SC45 89 CA2010, 89 PR295, ESTATE OF ROBERT WILSON LESLIE, 4/15/91: Upon consideration of the petition for Writ of Certiorari to the Colorado Court of Appeals, and after review of the record, the briefs, and the opinion of Said Court of Appeals, IT IS THIS DAY ORDERED that said petition for Writ of Certiorari shall be, and the same hereby is, DENIED. BY THE COURT, EN BLANC, April 15, 1991.

SUPREME COURT STATE OF COLORADO 91SC45 89 CA2010, 92 CV 1470, 89 PR295 ESTATE OF ROBERT WILSON LESLIE, 4/15/91

APPLICATION FOR CERTIORARI: Federal Constitution Amendment VII states," in suits at common law where the value of the controversy shall exceed twenty dollars, the right to a trial be jury shall be preserved." The Federal Constitution does not make an exception

in cases of probate where a personal appearance in not made at the hearing. Federal constitution Amendment XIV states, "No person shall be deprived of life liberty or property without due process of law." Petitioner's right to a jury trial has been denied in conflict with these two constitutional amendments.

Chapter 181 of the Colorado Session Laws of 1903 on page 481 states, " On or before the day set for a hearing of the probate of such will --- any person served with citation, as provided by law, or appearing at such probate, desiring to contest such will, or object to the validity, or legality of all or any portion of the contents thereof shall file in the county court a caveat of objections---p482. First, all such objections as may raise the issue

as to whether the writing in question be the last will of the testator or the testatrix or not, which issue shall first be tried by a jury, unless waived, according to the practice in civil actions." The law does not state petitioner must be at the probate hearing. Petitioner has been denied this right, and this law is still on the books.

The opinion of the Court of Appeal is in conflict with judgment of the Colorado Supreme Court in Foster v Kraugh Colo. 107 at 389. The high court repeated 37 of the Session laws just mentioned and HELD: Such courts are required to pass upon all objections to wills. Jeffreys v International Trust Co. 97 Colo. 188." The decision did not state the petitioner must e present at the probate hearing only that an objection be filed before

probate. There is evidence of forgery in the will. The first four pages do not bear the testator's initials as attested in the body of the will and in the attestation clause which is notary sealed. The provisions of the will are in conflict with the PETITION FOR PROBATE OF WILL AND APPOINTMENT OF EXECUTOR, verified and signed by the testator a short time before his death.

COLORADO STATE COURT OF APPEALS NO. 89CA2010 89 PR295 ESTATE OF LESLIE ET AL 1/10/91:

JUDGES J. Tursi, J. Pierce, J. Plank

Upon consideration of the petition for rehearing filed by the appellant herein, said petition is hereby DENIED. It is ordered that issuance of mandate hereby be, and the same hereby is, stayed to and including February 11, 1991, provided that if a petition for

a Writ of Certiorari is timely filed with the Supreme Court of the State of Colorado, the stay shall remain in effect until disposition of the within cause by the Supreme Court.

COLORADO STATE COURT OF APPEALS NO. 89CA2010 89 PR295 ESTATE OF LESLIE ET AL 1/10/91:

JUDGES J. Tursi, J. Pierce, J. Plank

PETITION FOR REHEARING, December, 24, 1990: Appellant hereby petitions for a rehearing in conformity with Colorado appellate rule 40 on the following grounds: GROUND ONE: The decision of the court of Appeal is against the law. Chapter 181 Session Laws of 1903 states," On or before the day set for the hearing of the probate of such will - -- any person --- desiring to contest said will, or object to the validity or legality of all or any portion of the contents thereof, shall

file in the county court, a caveat or objections---" This was done and ignored by the District Court and the Court of Appeal. "All such objections to the legality of all or any portion of the contents of such will then exists, and could then be raised and determined by any other action, which class of objections shall, if the instrument is found to be a will, be heard and determined by the court, before such will shall be admitted to probate. The law Does not state a petitioner must be present at the hearing, or his right to a hearing will be foreclosed if he fails to make an appearance on six days notice. It does state the matter must be heard and determined by the court which was not done. Andre McNichol, professor of graphology, and document examiner at UCLA and USC, tells me the objections

raised in the initial pleadings before the court at the time of the probate hearing were sufficient to revoke probate of the will. It is a physical impossibility to obtain a document examiners report and present it to the court on six days notice.

GROUND TWO: The decision of the court of appeal conflicts with that of the Colorado Supreme Court Foster v. Kreigh, 107 Colorado p389, HELD: A will contest is primarily a probate matter, and such courts are required to pass upon all objections to wills." Petitioner's objections were ignored and a hearing denied, which is also a denial of due process under the fourteenth amendment of the Federal Constitution. See Jeffery's v. International Trust Co. 97 Colo 188-192.

GROUND THREE: There was improper service. The notice of hearing was

not sent through the postal system, as confirmed by the affidavit of the postmaster which is in your file. There was no postmark on the envelope, and the person delivering the same was not an employee of the postal service. The record showing notice of delivery ten days in advance of the hearing is a forgery. Service was not given in conformity with 15-10-401.

GROUND FOUR: The fact the testator's initials are not present on each page of the forged will does indicate the instrument is a forgery. The testator, the three witnesses, and the notary, all declared under oath that the last will and testament of Robert W. Leslie had the testator's initials on each page of the will. They must be present at the signing of the last will and testament for the will to be authentic.

The scrivener of the will, an attorney with thirty years of experience, a high official of the Phillips Petroleum Company, would complete the formalities of execution correctly. It the testator, witnesses, and notary — incorrectly stated the initials were present, that is an error of commission. The errors cited in the court of appeal were errors of omission in which the signature was inadvertently misplaced on the document. In O'Brien v Wallace 145 COLO 291, mentioned by the appellate court, the Supreme Court states, "---there being no contention that the signatures were not those of the testatrix and subscribing witnesses, or that there were not affixed thereto in conformity with law, and no evidence presented tending to contradict such facts---." This is not the situation

in the case at bar, because evidence of forgery and allegations thereof were produced. In the case of Brock v Erickson mentioned by the court of appeal 28 Colo. App. 555. The signatures of the witnesses were not affixed to the same page as that of the testator. There was no allegation of forgery as in the case at bar, and all three witness testified in Brock that the document was the last will and testament, which did not occur in the case at bar in which none of the witnesses testified, and there were allegations of forgery.

The court of appeal stated Page on Wills paragraph 19.141 supported he court's position. On the contrary, this paragraph backs appellant's position, on page 267 paragraph three," If the attestation clause recites that certain acts were done, and it is silent

about other acts which are equally requisite, it is said that such clause is prima facie evidence as to such acts as set forth therein." Norton v Goodwine, 310 ILL 490, 142 NE 171; In re Beggan 68 NJE 572, 59 ATL 874." On the basis of this reference, the absence of the initials on each page of the will brands it as a forgery.

GROUND FIVE: The provisions of the will are in conflict with the petition for probate of will and appointment of executor dated June 14, 1988, subscribed to under oath and notarized constituting admissible evidence, which does not mention the adopted grandchildren in the will. Since the testator signed this declaration, it is prima facie evidence that he did not intend to include the adopted grandchildren in the will.

DECISION COLORADO COURT OF APPEALS

89CA2010 89 PR295 ESTATE OF ROBERT WILSON LESLIE, R. LESLIE V COLORADO NATIONAL BANK OF DENVER, 12/6/90, JUDGE TURSI, PIERCE, PLANK J.J. Petitioner, Robert Andrew Leslie, a son of the decedent, appeals from a trial order admitting his father's 1968 will to formal probate. We affirm. Petitioner filed pleadings in the formal testacy proceedings objecting to the probate of the will, asserting that the will was forged. A hearing on the matter was subsequently set for October 12, 1989. The record shows that the proponents of the will sent notice of the hearing to petitioner both by regular mail and certified mail on September 29, 1989, and the certified mail return receipt card indicates that the notice was delivered to petitioner on October 2, 1989.

The hearing was held as scheduled on

October 12, 1989, although petitioner failed to appear for the hearing. The will which was self proving, had previously been filed with the court. See §15-11-504, C.R.S. (1987 Repl. Vol. 6B). At the hearing the proponents of the will presented testimony indicating the decedent's signature was on the will, as well as the affidavit from one of the witnesses to the will stating that the witnesses saw the decedent sign the will and stating that the decedent at the time declared it to be his will. The trial court properly ruled that, because the will was self proved, compliance with signature and other requirements of execution were presumed unless there was evidence in rebuttal showing fraud or forgery. See §15-12-406(2), C.R.S. 1987 Repl. Vol. 6B). Although petitioner raised the issue of fraud

or forgery in his pleadings, no evidence was presented at the hearing rebutting the validity of the will. Accordingly as a matter of law, the trial court properly ordered that the will be admitted to formal probate. See O'Brien v. Wallace, 145 Colo. 291, 359 P.2d 1029 (1961).

Contrary to petitioner's argument, there is no critical defect in the will by virtue of the fact that the attestation clause erroneously states that the decedent has initialed the first four pages of the will. Such initials are not required for a valid will, and the erroneous recital in the attestation clause does not rebut the presumption of proper execution from the remaining recitals in the attestation clause. See §15-11-502, C. R. S. (1987 Repl. Vol. 6B); Brock v. Erickson, 28 Colo. App. 555, 475

P.2D 346 (1970); 2W. Bowe & D. Parker, Page on Wills §19.141 (1960)

The trial court also properly rejected petitioner's argument that he was not given sufficient notice of the hearing under the Colorado Probate Code. Notwithstanding the petitioner's assertion that he had only six days actual notice in advance of the hearing, the record of delivery of notice to petitioner, or his agent ten days in advance of the hearing, and, in any event, the Colorado Probate Code requires only that notice be given by mailing such ten days in advance of the hearing. See §§15-10-401(1)(a) & 15-12-403(1)(a), C.R.S. (1987 Repl. Vol. 6B). Petitioner's remaining contentions are without merit. Order Affirmed. JUDGE PIERCE and JUDGE PLANK concur.

89 PR295 ESTATE OF ROBERT WILSON LESLIE, R. LESLIE V COLORADO NATIONAL BANK OF DENVER, APPELLANT'S OPENING BRIEF JANUARY 1/31/90, JUDGE TURSI, PIERCE, PLANK J.J.: Appellant, representing himself, respectfully moves the court to revoke probate on the grounds the will is forged, and the probate court judge, the honorable Roxanne Bailin, abused her discretional authority in admitting a will known to be forged to probate, and in her refusal to entertain a motion to revoke probate because a court appearance was not made six days after notice contrary to Colorado Probate Code 15-10-401.

1. On or about July 24, 1966, Robert Wilson Leslie, retained Walter Barnes, an attorney duly licensed to practice law in the state of Oklahoma to prepare

his last will and testament. The testator instructed Mr. Barnes to divide the estate between appellant and his half brother William C. Leslie. 2. In due course, Walter Barnes drafted the Will and it was signed and witnesses but never delivered to the district court in Boulder, Colorado. 3. At least twenty years later, but before July 12, 1989, Walter Barnes rewrote the first four pages of the will by arrangement with William C. Leslie, a beneficiary under the will, in order to divert the greater part of the bounty to his own personal use. William C. Leslie is suspected of narcotic trafficing by the Federal Drug Enforcement Administration.

An objection to probate was filed in the Boulder District court August 11, 1989, because the will was forged, which was ignored by Judge Bailin of

the probate court. A motion was set to probate the will on September 12, 1989. Petitioner was notified on September 6, 1989. Probate was approved and petitioner's motion to revoke probate denied because no appearance was made on six days notice. Judge Bailin was advised this was contrary to Colorado Probate Code 15-10-401. She advised petitioner that 12 days notice had been given, based on a non existent certified mail return receipt in the court files. The Postmaster of the United States Postal Service of Orange County, confirmed the fact that the certified letter referred to by Judge Bailin, had not gone through the postal system, a legal requirement in Colorado. An affidavit to this effect was submitted to the Court of Appeals. Other grounds for revoking probate are that William C. Leslie

hastened the testator's death by prematurely withdrawing life support systems, and that William C. Leslie, is incorrectly listed as the son, when the testator is not his father.

FIRST GROUND: the will is forged.

On page 5, line 41, of the proffered will, it states," IN WITNESS WHEREOF, I have set my hand to this my last will and testament, consisting of this page, and the foregoing four (4) pages of typewritten matter, each of which said foregoing pages bears my handwritten initials for identification, this 23rd day of July A. D. 1968.

"No such initials are present on the proffered will of Robert W. Leslie, even though his signature is clearly visible. This declaration is repeated at the bottom of the page and attested by the three witnesses who signed the will. The Scrivener was telephoned

regarding these concerns and sent a photocopy of his carbon copy of the will. He told me it was his usual practice to have the testator sign the will and initial the pages at the same time and with the same pen and the initials should be visible if the signature is visible. Documentary proof that the testator never intended to include the adopted grandchildren in the will is in the court file of the Washington County file P-88-89 Estate of Eleanor Bertha Leslie, **PETITION FOR PROBATE OF WILL AND APPOINTMENT OF EXECUTOR.** Paragraph three states," The names, ages, and residencies of the heirs, devisees, and legatees of the decedent so far as known by your petitioner, are as follows: First National Bank in Bartlesville, Oklahoma, trustee, Robert W. Leslie, William C. Leslie, Robert

Andrew Leslie." There is no mention of the adopted grandchildren in this petition, because if they were included the testator would have known the will was forged and taken appropriate measures. (This petition was signed by the testator three months before his death.) SECOND GROUND, William C. Leslie, a beneficiary under the will, hastened the decedent's death by prematurely withdrawing life support systems, during the terminal phase of his illness, depriving decedent the opportunity to change his will. See ALR 2d 963 et. seq.)(UPC $2 803)

During the final phase of decedents illness, I remained in contact with the hospital, monitoring my father's progress. Four days before father's death, appellant was shocked to find the hospital had discontinued all medication and life support systems,

based on the decision of William C. Leslie after consultation with the attending physician. The nurse was in tears. Life support systems were reinstituted after my strong complaint to the attending physician, who apologized stating he was unaware my father had any other living relatives. Petitioner, a physician, qualifies as an expert witness, and states, unequivocally, the premature withdrawl of life support systems hastened the testator's death. The ink had not dried on father's death certificate, when William C. Leslie, whom I had not spoken to in many years, was constantly on the phone badgering petitioner for a speedy probate of the will. THIRD GROUND. William C. Leslie is erroneously listed as the son when the testator is not his father. William C. Leslie is the son of the

mother. Official records show my father was married on December 1, 1926, and the forged will states William C. Leslie was born on October 12, 1924, two years prior to my father's marriage. Eleanor C. Leslie, the mother, obtained an annulment from the true father. **BOULDER COLORADO DISTRICT COURT 89 PR 295, Division 5 MINUTE ORDER, November 22, 1989, Roxanne Bailin Judge:** On November 3, 1989, this court ordered Robert Andrew Leslie to provide some basis for his claim of lack of notice. Mr. Leslie filed a "declaration" on November 15, 1989, stating he got six days notice, not ten, as required by the Colorado Probate Code §15-10-401. The code requires the notice be mailed at least ten days before the hearing. The notice was mailed September 29, 1989; the Certified mail was not required; however it was made in this

case. The return card was signed on October 2, 1989, 10 days before the hearing. The petition to revoke probate is denied. **BOULDER COLORADO DISTRICT COURT 89 PR 295, Division 5, OCTOBER 12, 1989 Roxanne Bailin Judge MOTION TO REVOKE PROBATE:**

Petitioner, respectfully moves this court to revoke probate of the Will of ROBERT WILSON LESLIE on file herein, based on this notice of motion, on the declarations of the petitioner, the memorandum of points and authorities served and filed herewith, on the records on file herein, and such evidence as may be presented at the hearing of the motion.

Petitioner is a person interested in the devolution of the estate of the decedent in that he is the only blood heir. Probate of the Will should be revoked on the following grounds:

First ground: the will is forged. Second ground: William C. Leslie, a beneficiary under the will hastened the decedent's death by prematurely withdrawing life support systems in the terminal phase of his illness depriving decedent the opportunity to change the will. c. Third ground: William C. Leslie is erroneously listed as the son when the testator is not his father, and the birthdate is incorrect. William C. Leslie is the son of the mother.

Petitioner believes the validity of the will is an issue of fact which should be determined at jury trial and respectfully requests this issue be submitted to a jury.

BOULDER COLORADO DISTRICT COURT 89 PR 295, Division 5, OCTOBER 12, 1989 Roxanne Bailin Judge signed an order admitting the will to probate. BOULDER

COLORADO DISTRICT COURT 89 PR 295, Division 5 OPPOSITION TO PROBATE, AUGUST 30, 1989 Roxanne Bailin Judge: I, Robert A. Leslie, M. D. son of the deceased, Robert Wilson Leslie, hereby oppose probate of the will submitted by the law firm of Bradley, Campbell, Carney & Madsen on the basis the instrument is forged.

On page 5, line 41 of the proffered will it states, "IN WITNESS WHEREOF, I have set my hand to this my last will and testament, consisting of this page, and the foregoing four (4) pages of typewritten matter, each of which said foregoing pages bears my handwritten initials for identification, this 23rd day of July A. D. 1968." No such initials are present on the proffered will of Robert W. Leslie, even though his signature is clearly visible. This declaration is repeated

at the bottom of the page and attested by the three witnesses who signed the will. This was observed on the copy of the alleged will sent by William C. Leslie, David Rowland, The Colorado National bank of Denver and Bradley, Campbell, Carney and Madsen.

The scrivener of the will is an attorney with fifty years of experience in writing wills, and held a high position with the Phillips Petroleum Company, yet obvious errors of law and lack of familiarity with the family appeared in the proffered will, to wit: 1. The wrong birth date is recorded for William C. Leslie. 2. William c. Leslie was erroneously listed as the son when the testator was not his father. 3. The adopted children of William C. Leslie were erroneously listed as children, when it is commonly understood the term children for probate

purposes refers to blood descendants 4. The will is supposed to be a reciprocal will, yet the trust extended to age 30, in the case of the will for Eleanor C. Leslie, and to age 25 in the case of Robert W. Leslie. 6. Since William C. Leslie was not the son of Robert W. Leslie, and was never legally adopted into the family, along with the erroneous recorded birth date, would make it difficult for him to collect his legacy. 7. The terms of the will were highly unorthodox and would give the grandchildren by adoption a double share in the proceeds of the estate. 8. My wife and William's wife were both omitted from the will which was not my parents usual practice.

The Scrivener was telephoned regarding these concerns and sent a photocopy of his carbon copy of the will. He told me it was his usual practice to

have the testator sign the will and initial the pages at the same time and with the same pen and the initials should be visible if the signature is visible. The copy of the will sent by the scrivener showed signs of having been written on two typewriters. He said it was his usual practice to have all wills written on the same typewriter. WHEREFORE, the plaintiff prays to have the submitted Will declared null and void, and have the estate of ROBERT WILSON LESLIE settled by intestate secession

SUPREME COURT, STATE OF COLORADO, CASE NO. 94SC254, CERTIORARI TO 93CA0185, 92CV1470, AUGUST 22, 1994, ROBERT A. LESLIE v. WILLIAM C. LESLIE, et. al.; Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals, and after review of the record, the briefs, and the judgment of said court of appeals, IT IS THIS DAY ORDERED that said petition for Writ of Certiorari shall be, and same hereby is, DENIED.

SUPREME COURT, STATE OF COLORADO, CASE NO. 94SC254, CERTIORARI TO 93CA0185, 92CV1470, MAY 2, 1993, PETITION FOR WRIT OF CERTIORARI, ROBERT A. LESLIE v. WILLIAM C. LESLIE, et. al.: Appellant hereby petitions the Colorado Supreme Court for a Writ of Certiorari on the issue whether the doctrine of Equitable Estoppel based on fraudulent concealment is applicable to a probate action.

The will of Robert W. Leslie was offered for probate in the Boulder Court, 89 PR 295, which was admitted to probate over the objections of Robert A. Leslie, a beneficiary under the will, who appealed the admission of the will to probate in action 89CA2010, which court affirmed the admission of the will to probate, a petition for writ of Certiorari being denied by this court April 15, 1991.

Plaintiff contended probate should be revoked because the testators initials were not on the first four pages of the will, as stated in the attestation clause, that it conflicts with a declaration made by testator three months before his death, that it was contrary to his father's wishes because the beneficiaries in the two purported wills differed drastically, and because of undue influence because

of a beneficiary's behavior before and after death.

A federal court action was filed in Tulsa, Oklahoma, because the Phillips Petroleum Company refused to submit exemplars of the testators signature unless an action was filed in Oklahoma. The exemplars revealed the signature to be authentic. Further inquiry revealed that the witnesses did not observe the signing of the will as stated in the will and attestation clause constituting perjury, and the scrivener perjured himself when he stated in his answer to the Federal action in Tulsa, Oklahoma, that he and the witnesses saw the signing of the will.

Plaintiff did not investigate this matter earlier because the notary sealed will stated the notary, and the witnesses observed the signing

of the will.

On the basis of this discovery, civil action 92 CV 1470 was filed in the Boulder District Court, seeking to revoke probate on the basis of equitable estoppel by fraudulent concealment. This action was summarily dismissed without notice or hearing by the honorable judge Santead. His dismissal was appealed to the court of appeal 93CA0190, which affirmed the judgment, The Court of Appeals stated that the doctrine of Res Judicata and Collateral Estoppel foreclose the relitigation of the issue of the execution of the will, but suggested the matter be appealed to the Colorado Supreme Court, which plaintiff is now doing.

Petitioner believes the doctrine of Equitable Estoppel be fraudulent concealment estops the doctrine of

Res Judicata and Collateral Estoppel in this instance, and prays a Writ of Certiorari be issued so this court may judicate the matter.

Generally, equitable estoppel is a rule of justice which in its proper field prevails over all other rules and doctrine, and may be invoked to cut off rights or privileges conferred by statute, and constitutional rights may be effectively waived by conduct consisting of action or failure to act." Johnson v Neel, 229 P2d. 939, 115 Colo. 377.

APRIL 1, 1994 THE COLORADO COURT OF APPEAL DENIED PETITION FOR RECONSIDERATION 93CA0185 92CV1470, ROBERT A. LESLIE v. WILLIAM C. LESLIE, et. al.

PETITION FOR RECONSIDERATION COLORADO COURT OF APPEAL 93CA0185 92 CV 1470 MARCH 21, 1994, ROBERT A. LESLIE v.

WILLIAM C. LESLIE, et. al.: In the carefully considered decision, handed down by this court, March 10, 1994, page 2, paragraph 3 states," Plaintiff challenged whether the will was properly executed in his earlier action and is, therefore, barred from raising it in this action." Based on the legal doctrines of res judicata and collateral estoppel. Petitioner believes the doctrine of equitable estoppel or estoppel in pais by fraudulent concealment estops defendant from application of this doctrine in this insistence.

The court points out in the final statement on page two that collateral estoppel bars a second action on a claim previously litigated if the party against whom the estoppel is asserted "if the party against whom the estoppel is asserted **had a full and fair**

opportunity to litigate the issue in the prior proceeding." In fact, plaintiff did not have an opportunity to litigate the issue in the previous hearing because of fraudulent concealment, and because he had only six days notice prior to the probate hearing to determine the nature of the fraud, an impossible task. The doctrine of equitable estoppel by fraudulent concealment provides that a defendant is estoppel from exerting a statute of limitations defense if a defendants own misconduct prevented plaintiff from filing a suit in a timely manner: Bell v Cooper 881 F2ds 257; Gomez v Great Lakes Division National Steel Corp. 803 F2d 250.

The U. S. Supreme Court decision of the United States v Throckmortin 98 U. S. 61,65 (25L ED 93), HELD: relief will be granted in cases which, " reason

of something done by the successful party to the suit, there was in fact no adversary trial or decision on the issues of the case. When the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent."

The final paragraph of page 6, and the first page of page 7 of the proffered will states," We the undersigned, do hereby certify and declare that the foregoing last Will and Testament, consisting of this page and the foregoing four (4) pages of typewritten matter bearing the handwritten initials of Robert W. Leslie was on the date thereof initialed, signed and subscribed by the said Robert W. Leslie, was on the date thereof **initialed, signed and subscribed by the said Robert W. Leslie in our**

presence and in the presence of each of us, was at the same time declared by him to each of us to be his last will and testament . . . "

Page 7 of the proffered will the witness declared under oath before the notary," all of the said persons being by me first duly sworn, the said Robert W. Leslie, testator, declared to me and to said witnesses in my presence, that said instrument is his last will and testament . . . "

In addition, Walter Barnes, the scrivener enjoyed a confidential relationship with the testator, both because of the attorney client relationship, and because as a close friend and business associate, and as such, did not provide plaintiff with a duty to inquire. The scrivener also lied under oath in his response to plaintiff's action to the Federal

District Court in Tulsa, Oklahoma, that the will complied with all of the formalities of execution.

Plaintiff, did not believe that five people, including the attorney and notary, would perjure themselves by signing false legal documents, which is a felony, and had a mistaken belief the signatures were forged. Plaintiff found out, when the document examiner informed him the signatures were authentic, approximately nine months ago, that he made inquiry and discovered the witnesses were not in the room when the will was signed and that the signature was not witnessed, because this was not a requirement of Oklahoma law.

DECISION OF THE COLORADO COURT OF APPEALS 93CA0185, 92CV1470, MARCH 10, 1994, JUDGE HUME, JUDGE RULAND AND CASEBOLT JJ. CONCUR. ROBERT A. LESLIE

V. WILLIAM C. LESLIE.

Plaintiff, Robert A. Leslie, appeals the dismissal of his claim challenging the admission of his deceased father's will to probate. We affirm. Plaintiff challenged his father's will as fraudulent and objected to its admission to formal probate. However he neither attended a hearing scheduled to consider his challenge nor did he present any evidence to support his allegations, and the will was admitted into probate. After plaintiff unsuccessfully appealed the admission of the will to probate, he subsequently initiated this separate civil action seeking to attack the order admitting the will to probate on the basis of fraud. 1. Plaintiff first contends that the trial court denied him due process by dismissing his claim without conducting a hearing.

We disagree. A trial court has discretion in determining the necessity of holding oral argument or an evidentary hearing prior to ruling on a motion. If oral argument is neither requested by a party nor ordered by the court, a court must determine the motion based on its own merits and any supporting or opposing briefs submitted. Platte River Power Authority v. Nelson, 775 p.2d 82 (Colo. App. 1989); C.R.C.P. 121 §1-15(4).

Here, the record does not reflect that plaintiff requested a hearing in either of his two responses to defendant's motion to dismiss. Hence, we do not address any contentions of error asserted for the first time on appeal. In addition, we perceive no denial of fundamental fairness in the court's ruling on the motion to dismiss after considering the written materials

submitted.

II. Plaintiff next contends that the order admitting the will to probate should be revoked based on his claim that the will was not properly executed, that it conflicts with a declaration which the testator made within months of his death, and that it was contrary to his father's wishes because the two beneficiaries in the two purported wills differed drastically. He also asserts that the will was the result of undue influence and that revocation is warranted because of a beneficiary's behavior both before and after his father's death. We disagree.

Plaintiff challenged whether the will was properly executed in his earlier action and is, therefore, barred from raising it in this action.

Res judicata bars a second action on a claim previously litigated when

there is a final judgment and identity of the subject matter, claims for relief and parties to the action. Res judicata bars all claims that were actually litigated in an earlier proceeding and any claims that should have been raised in that proceeding, but were not. Collateral estoppel bars relitigation of an issue if it is identical to one actually and necessarily adjudicated at as prior proceeding; if the party against whom estoppel is asserted was a party or in privity with a party in the prior proceeding; if there was a final judgment on the merits; and if the party against whom estoppel is asserted had a full and fair opportunity to litigate the issue in the prior proceeding. Collateral estoppel is conclusive in a subsequent action between the parties, whether the action

is for the same or a different claim. Denver v. Block 173 Associates, 814 P.2d 824 (Colo. 1991.) The determination of issues in probating a will is an adjudication on the merits. Glenn v. Mitchell, 71 Colo. 394, 207 P. 84 (1922).

Here plaintiff raised some of the theories supporting his contention that the will had not been properly executed in his written opposition to its admission to probate. Therefore, he had an opportunity to litigate those theories in the probate court but did not do so. Despite plaintiffs' claims as to its invalidity, he (sic) will has been finally determined to be valid. Accordingly, we conclude that plaintiff was properly precluded from relitigating both those claims and theories which he had previously raised, and those which had not been raised, in the

earlier proceedings, but which should then have been asserted.

III. Lastly, defendants request that attorney fees and costs be imposed against plaintiff for bringing this appeal. However, since plaintiff's conduct appears neither egregious nor to have been unequivocally pursued in bad faith, we disagree that sanctions are appropriate here. See Wood Brothers Homes, Inc. v. Howard, 862 P2d 925 (1993). The judgment is affirmed.

COLORADO STATE COURT OF APPEAL 93CA0185 92 CV 1470 APPELLANT'S CLOSING BRIEF, SEPTEMBER 14, 1993, ROBERT A. LESLIE v. WILLIAM C. LESLIE, et. al.;

Page five of respondent's brief erroneously states that the issues of 92CV1470 had been previously litigated: The fact of the crowding of the margins of the legal document had not previously been brought to

the attention of this court, or of the scrivener's meticulous attention to grammar, or the fact the witness were not in the room with the testator when the will was signed, contrary to the recital in the attestation clause of the will, the fact of the presenile dementia of the testator's wife, and the fact of undue influence on the testator's wife by William, a beneficiary under the Will.
The doctrine of res judicata is not applicable in view of the additional information not submitted in the previous appeal.

Respondent next states fraud is not a cause of action on which relief can be granted. She is mistaken. In Glenn v Mitchel 207 P 84, the Colorado Supreme Court determined," Upon proof of fraud or collusion in the procurement of a judgment, such

judgment may be vacated at any time."

Respondent failed to comment on the main point of the opening brief: whether a district court judge has the power to dismiss an action without notice or hearing. Such abuse of process is not tolerated in California Courts. Petitioner's argument was ignored by the presiding judge, and the applicable statutory law, without a hearing in violation of petitioner's due process rights, which is the reason for this appeal. Said dismissal is contrary to the opinion of the Colorado State Supreme Court which HELD": In determining whether a will contest should be submitted to a jury, every favorable inference fairly deductible and every favorable presumption fairly arising from the evidence must be considered as facts proved in favor of contestants, and all evidence in

favor of the contestants, for such purposes, be taken as true, and if contributory evidence has been given it must be disregarded." Ofstad v Sarconi 252 P.2d. 94.

It is also a denial of due process guaranteed in U.S. Constitution amendment XIV; Const. art 2 §25. 1967 perm. supp., C.R.S., 66-2914. " Due process of law" affords a hearing before it condemns, and given judgment only after trial. People v Max 198 P. 150,70 Colo. 100. Access to the courts of the United States is a constitutional right guaranteed by due process clause of fifth and fourteenth amendments. U.S.C.A. Const. Amendments V XIV' Silver v. Cormier, 529 F.2d 161.; Jones v Hildebrandt, 550 P2d., Certiorari granted 429 U.S. 1061. Due process always implies hearing or trial and judgment Const. art 2, §25. La Planta

River & Cherry Creek Ditch Co. v. Hinderlider 25 P2d. 187

For the reasons advanced and on the basis of the authorities suggested, petitioner respectfully requests this court issue an order revoking probate, or for a jury trial so the issues may be decided on its merits.

COLORADO STATE COURT OF APPEAL 93CA0185 92 CV 1470 APPELLANT'S OPENING BRIEF, JUNE 7, 1993, ROBERT A. LESLIE v. WILLIAM C. LESLIE, et. al.: DESCRIPTION OF CASE: This action was commenced by plaintiff in November 1992, alleging the will of his father, Robert W. Leslie, admitted to probate October 12, 1989, by the Boulder District Court, 89PR295, was fraudulent, because the first four pages of the proffered will did not have the testator's initials as stated in the attestation clause; that Judge Bailin refused a continuance,

notwithstanding the fact petitioner had not received proper notice through the mail, and the listing of the beneficiaries of the will did not conform to the executors declaration signed by the testator three months before his death. The matter was unsuccessfully appealed to the Court of Appeal, 89 CA 2010, and to the Colorado Supreme Court.

Initially, plaintiff believed the signature to be forged and retained the services of the internationally famous document examiner, Andrea McNichol, and others. The nature of the fraud was only definitely determined one year ago, owing to the difficulty in locating authentic exemplars of the testator's signature dating back to 1968, and the complexity of the case. The first four pages of the will were retyped after the will was

signed, adding the adopted grandchildren in the will contrary to the testator's intention. The additional wording caused crowding of the margins of the altered document, which failed to conform to court practice.

When the nature of the fraud was discovered, action 92CV1470, was filed in the Boulder District Court, which was erroneously dismissed by Judge Santead without notice or hearing, presumably, based on the declaration of Laura Volkswagon, the action was time barred by the statute of limitations C.R.S. § 13-80-101, instead of C.R.S. §15-10-105, which gives a five year statute of limitations, after discovery of the fraud, for filing an action revoking probate. This decision is also contrary to Case law. In Glenn v Mitchel 207 P 84, the Colorado Supreme Court determined,"

Upon proof of fraud or collusion in the procurement of a judgment, such judgment may be vacated at any time."

Opposing counsel also erroneously pleaded res judicata and collateral estoppel, based on different arguments given in a previous appeal.

DUE PROCESS RIGHTS

Petitioner's rebuttal argument to this effect was ignored by the presiding judge, and the applicable statutory law, without a hearing in violation of petitioner's due process rights, which is the reason for this appeal. Said dismissal is contrary to the opinion of the Colorado State Supreme Court which HELD": In determining whether a will contest should be submitted to a jury, every favorable inference fairly deductible and every favorable presumption fairly arising from the evidence must be

considered as facts proved in favor of contestants, and all evidence in favor of the contestants, for such purposes, be taken as true, and if contributory evidence has been given it must be disregarded." Ofstad v Sarconi 252 P.2d. 94.

It is also a denial of due process guaranteed in U.S. Constitution amendment XIV; Const. art 2 §25. 1967 perm. supp., C.R.S., 66-2914. " Due process of law" affords a hearing before it condemns, and given judgment only after trial. People v Max 198 P. 150,70 Colo. 100. Access to the courts of the United States is a constitutional right guaranteed by due process clause of fifth and fourteenth amendments. U.S.C.A. Const. Amendments V XIV' Silver v. Cormier, 529 F.2d 161.; Jones v Hildebrandt, 550 P2d. Certiorari granted 429 U.S. 1061. Due process

always implies hearing or trial and judgment Const. art 2, §25. La Planta River & Cherry Creek Ditch Co. v. Hinderlider 25 P2d. 187

Petitioner was informed by Judge Santead's clerk, that the presiding judge was ill, that the Honorable Judge Santead was substituting for him on an interim basis, and both judges declined to write a decision, requiring petitioner to do so, submitting a copy for their approval and signature. Petitioner would point out the rendering of a judgment, without notice and hearing, is regarded as a denial of due process in California Courts, and Colorado Courts according to the citations in the previous paragraph.

GROUNDS FOR REVOCATION OF PROBATE

FAILURE OF EXECUTION:

There was failure of execution because, 1. The testator's initials

were not included in the first four pages of the will as stated by the attestation clause. This matter was submitted to the court of appeal on the first appeal, 89 CA2010, the court of appeal ruling this was not necessary for the validity of the will. It does not speak for the validity of the will.

2. Two of the three witnesses tell me they were not in the room with the testator when the will was signed, as recited in the attestation clause, it not being a legal requirement in the state of Oklahoma, where the will was drafted. This is contrary to the opinion of the Colorado Supreme Court which HELD: The statutory provision that witnesses to will shall attest it by subscribing their names thereto requires observation by witnesses to see that the testator executed and had capacity to make will, as well

as placing their names on the document; the word "attest" having far broader meaning than word "subscribe" 35 C.S.A. c. 176 §39. Under this decision the proffered foreign will would be denied probate in Colorado.

3. The attestation clause, is inaccurate; it erroneously states," We, the undersigned, do hereby certify and declare, that the foregoing Last Will and Testament, consisting of this page and the foregoing four (4) pages of typewritten material bearing the handwritten initials of Robert W. Leslie, was on the date thereof initialed, signed and subscribed by the said Robert W. Leslie in our presence and in the presence of each of us, and was at the same time declared by each of us to be his last will and testament; we at the same time at his request, and in his presence and in

the presence of each of us, do hereby subscribe our names and addresses as attesting witnesses this 23 day of July A. D. 1968, at Bartlesville, Oklahoma, and do certify further at the time of the execution of said last will and testament that Said Robert W. Leslie was of legal age and was of sound mind and disposing memory."

These statements are false because: 1. The testator did not sign the will in the witnesses presence. 2. The last will and testament, probated in the Boulder court, did not have the testators initials on the first four pages. 3. The testator did not declare to the witnesses, the proffered document was his last will and testament, at the time he signed it, because he was not in the room with the witnesses when the will was signed.

The witnesses' account is also in conflict with the affidavit of Walter Barnes, Scrivener, who stated the testator and the witnesses were in the same room at the time the will was signed.

In California Courts, proof of the falsity of a declaration is enough to impeach the whole document. (Evidence code 972 h.) In Oklahoma Law, if the Validity of the will is questioned, a Witness must testify as to its authenticity, preventing its probate as a foreign will in Colorado. In re McGARY'S ESTATE, 259 P2d p 771, "when it appears to the court that a will cannot be proven . . . because one or more of the subscribing witnesses . . . are physically incapable of testifying . . . the court may admit the will

to probate upon the testimony of the witnesses that the signature of the will is in the handwriting of a person whose will it purports to be." Re. McGary's estate 258 P2d 771-2. This was not done.

THE MARGINS ARE CROWDED SUGGESTING TAMPERING WITH THE WILL:

The spacing and margins is inadequate, due to the additional wording necessary to include the adopted grandchildren in the will. Such a document would not be accepted in the Oklahoma State Supreme Court for pleadings, requiring a one and one-half inch margin, on the top and bottom and a one inch spacing on the sides.

It is a matter of petitioner's personal knowledge that the scrivener of the will was very careful and meticulous regarding grammar, punctuation and spacing of the legal

documents he drafted; the first four pages of the proffered will not follow these rules, although the fifth page did so. This knowledge was based on inspection of contracts drafted by Walter Barnes, for Philblack Limited, and Cofrablack Ltd., when the testator was a technical representative for the Phillips Petroleum Company.

Phillip Arnold, a vice-president of the Phillips Petroleum Company, who was the supervisor of the testator, and Walter Barnes, concurs with this. Mr. Arnold speaks eight languages, has filed many patents, has accumulated a vast fortune from their royalties, and is highly regarded throughout the industry. On the basis of this, and other discovered information, a separate action, 92CV1470, was filed in the Boulder District Court, which was dismissed by Judge Santead without

notice or hearing while discovery was in progress. This argument is further discussed in FURTHER DECLARATION IN SUPPORT OF COMPLAINT FOR RECESSION BASED ON FRAUD, on pages 21-22 of the Record on Appeal. The proffered will of Robert W. Leslie, dated July 23, 1968, is hereby affixed as EXHIBIT A. This will did not comply with the rules of the Supreme court, and general typing practice, which state a one inch margin shall be present on each side, and 1½ inch space at the bottom and top of the page. A verbatim copy of this will meeting this requirement is hereby affixed as exhibit B. This copy of the will, which is six pages, does not comport with he attestation clause stating the will is five pages. A verbatim copy of this will deleting the adopted grandchildren is affixed as EXHIBIT C. Additional lettering

not in the proffered will is demonstrated by bold type. This will is exactly five pages long in conformity with the attestation clause of the will.

Plaintiff submits these exhibits as further evidence supporting his allegation that the scrivener, Walter Barnes, retyped the first four pages of the will after it was signed, fraudulently submitting it to the court as the last will and testament of Robert W. Leslie.

WILL CONFLICTS WITH NOTARIZED DECLARATION MADE THREE MONTHS PRIOR TO TESTATOR'S DEATH. Further evidence of the fact, the proffered will is not the last will and testament of the testator, is the notarized DECLARATION OF THE TESTATOR, clerks transcript p95, 96, filed some three months before the testator's death,

in which the adopted grandchildren are not mentioned as beneficiaries, which is in conflict with the provisions in the will. This indicates either the testator drafted another will after the proffered will, or was deceived as to the contents of the will.

In Re DEANE'S ESTATE, 153 2d, the Florida Supreme Court HELD": Where it is shown the provisions of a purported will run counter to the natural affection of the testator, or his long expressed purpose, the burden shifts to the proponent to dispel these improbabilities, and prove by a preponderance of the evidence, that the purported will was in fact the will of the testator, freely and voluntarily executed Watts v Newport, 149 Fla 181, 6 So2d. 829." This has not been done.

WILL PROVISION'S DIFFERED DRASTICALLY

FROM TWO PREVIOUS WILLS.

It should be noted testator drafted two wills between 1959 and 1968, and no subsequent wills were filed, notwithstanding the fact a number of changes occurred, justifying the filing of a revised will, e.g. Robert's marriage, his inability to remain in college, and the fact the adopted grandchildren were now unlikely to go to college, not requiring a trust fund. It was also a matter of plaintiffs' personal knowledge that testator disliked trusts because of their lack of flexibility. This strongly suggests that subsequent Wills of the testator were lost or destroyed.

A declaration by testator, contrary to the facts stated in the will may be grounds to revoke probate of the will. In Re McCauley, 101 Ariz 8, 415 P2d 431. Howell v Howell, 210

Ala, 429, 98 So 630; Street v Street, 246 Ala 683,22 S2d 35; Re Burton 45 S2d 873; Hutchins v Hutchins, 135 Md 401,109 Atl 121; Lawson v Ward, 153 Md. 93, 137 Atl 479; Welch v Clifton, 148 ALR 1220. Craycroft v Crawford 285 SW 275,287 SW, 244. See also Sansona v Laraia, 88 Conn 136, 90 Atl 128; Lyon v Townsend, 124 Md 163, 91 Atl 104; Cowan v Shaver, 197 Mo 203, 95 SW 200; Bradford v Blossom, 207 Mo 177, 105 SW 289; Sanders v Stiles, 2 redf (NY) 1. §13.5 etc.

The provisions of the third proffered will also differed drastically from those of the first two wills in that the adopted grandchildren are not included in the first two wills.

UNDUE INFLUENCE ON TESTATOR'S WIFE BY WILLIAM'S FAMILY

Robert, a legatee, on several

occasions, gave threats to plaintiff not to contest the will. He may have been sent by all involved. These telephoned threats were duly recorded, their admission in evidence being denied by this court. Plaintiff submits this fact, as a possible example of undue influence. These threats were made notwithstanding the fact he was represented by counsel. Lewis v Martin, 201 Ala 401, 98 So 135.

The testator's wife very susceptible to undue influence, after the onset of her presenile dementia, and William was always hanging around their house, after he noted the onset of the dementia, taking advantage of the situation. In our last visit to the testator's house, Bill and Jane were observed insulting mother. On one telephone call, the testator stated," William never seems to be working."

William developed a confidential relationship to mother, being given a copy of the forged will prior to the testator's death. She gave William a trip to the near East, to Europe, a down payment on his house, and other substantial personal favors, creating a presumption of undue influence, requiring submission to a jury. It is noteworthy the testator took over the management of the family finances from his wife. Mother suffered from presenile dementia, her brain being only one-quarter of its original size, making her very susceptible to this influence. Estate of Petersen 493 NW2d. 624.:Estate of Henke 561 NW 2d 314. There are numerous other citations of this principal in probate Law. The fact that William's family benefited substantially in the forged will, in

comparison with the two previous wills, strengthens this contention. Berknawitz v Berkowitz 162 A2d. 709; Re Anthony, 121 NW2d 772; Re Cooper, 137 NW 2d.93.

The fact that the natural objects of testator's bounty did not know of the execution of the will until after the testator's death, some period subsequent thereto adds to this inference of undue influence; Re Reddaway, 329 P2d 886; Lewis v Martin, 98 So 635; Loveridge v Brown, 129 Atl 131; Hickman v Hickman 244 SW 2d 681. Rosenblum v Cahn, 351 SW2d. 857.

WILLIAM'S BEHAVIOR AFTER TESTATOR'S DEMISE: William speeded the testator's death by prematurely withdrawing life support systems, in conflict with a physician's instinct to prolong life. When the plaintiff complained to the attending physician, he apologized, stating he was unaware of any other

relatives being present, and immediately reinstituted the life support systems on plaintiff's insistence. By the premature withdrawal of life support systems, William shortened the testator's life, preventing the testator changing his will, which he would certainly have done had the testator recovered and been told what had happened. Plaintiff, on the other hand, wished his father to live, constantly monitoring his clinical progress to insure he received the best possible care.

The ink had not dried on father's death certificate when William, whom I had not spoken to in many years, repeatedly telephoned our home, badgering plaintiff for a speedy probate of the will. He obviously had been provided with a copy of the forged will, prior to the testators death,

an example of undue influence; his voice sounded guilty, strongly suggesting fraud, involving the will. One telephone calls was so disgusting, plaintiff hung up.

WILL PROVISIONS NOT IN COMPLIANCE WITH TESTATOR'S WISHES:

The provisions of the fraudulent will are highly unorthodox, do not comply with the testator's expressed wishes, and the known facts of the situation. The proffered will provides for a college education for Margaret Ann Leslie, who is mentally retarded, a ward of the state, who would receive no benefit from any legacy, and uneducatable. In general, the testator had little patience for the handicapped. Had the testator intended to provide for her care, he would have done so during her lifetime, not only for the first twenty-five years.

Robert J. Leslie, a high school dropout, failed his first semester in college. His enlistment in the armed forces provided college tuition, had he shown any interest in attending, making it unnecessary to provide for this in the will. In addition, Robert repeatedly made threatening telephone calls to plaintiff's home, which were recorded.

The testator repeatedly expressed strong disapproval of William Leslie's family: William is a confidence man, a high school dropout and a college dropout. Robert is a confidence man, a high school dropout, and a college dropout. Ann is mentally retarded. David did not complete college, and the whole family is suspected of narcotic trafficing.

My father worked hard all of his life, highly respected education and

was extremely successful, being the president of Cofrablack Limited, and the head of European operations of the Phillips Petroleum Company. He had good moral character and respected money. He would not disinherit his only son, a physician, in favor of William, a high school dropout who was not his son, and his adopted children, unrelated by blood, and of mediocre achievement, who were suspected of narcotic trafficing. Petitioner respectfully requests this court issue an order revoking probate, or for a jury trial so the issues may be decided on its merits.

NOTICE OF APPEAL 93CA0185, 92CV1470 DIVISION 2 HONORABLE JUDGE MORRIS SANTEAD, FEBRUARY 14, 1993, ROBERT A. LESLIE v. WILLIAM C. LESLIE, et. al. 92CV1470 division 2 Description of Case: This action was commenced

by plaintiff in November 1992, alleging the will of his father, Robert W. Leslie, admitted to probate October 12, 1989, by the Boulder District Court, 89PR295, was fraudulent, because the first four pages of the will were retyped after the will was signed. The matter was initially appealed to the Court of Appeal, 89 CA 2010, on the basis the testator's initials were not on the first four pages of the will as required by the attestation clause, that Judge Bailin refused a continuance, notwithstanding the fact petitioner had not received proper notice through the mail as required by statute, and the listing of the beneficiaries of the will did not conform to the executors declaration signed by the testator three months before his death. This matter was

unsuccessfully taken to the Colorado Supreme Court. Initially, plaintiff believed the signature to be forged and retained the services of the internationally famous document examiner, Andrea McNichol, and others. The nature of the fraud was only definitely determined one year ago, owing to the difficulty in locating authentic exemplars of the testator's signature dating back to 1968. The signatures and typewriting were found to be authentic, but the first four pages of the will were retyped after the will was signed, adding the adopted grandchildren in the will contrary to the testator's intention. The required additional wording caused crowding of the margins of the altered document, which failed to conform to court rules. When the true nature of the fraud was discovered, action

92CV1470, was filed in the Boulder District Court. This was dismissed by Judge Santead without notice or hearing. Opposing counsel also erroneously pleaded res judicata and collateral estoppel, based on different arguments given in a previous appeal. Petitioner's rebuttal argument to this effect was ignored by the presiding judge, and the applicable statutory law, without a hearing in violation of petitioner's due process rights, which is the reason for this appeal. Petitioner was informed by Judge Santead's clerk, that the presiding judge was ill, that the Honorable Judge Santead was substituting for him on an interim basis, and both judges declined to write a decision, requiring petitioner to do so, submitting a copy for their approval and signature. Petitioner would point out the rendering

of a judgment, without notice and hearing, is regarded as a denial of due process in California Courts. Pursuant to this, a copy of a proposed judgment is affixed to this petition, APPENDIX, and a copy of the signed judgment will be submitted when it is signed. **(The honorable Judge Santead never gave an order dismissing this action sending instead his order of February 24, 1993 approving the final distribution, apparently intending it to substitute for his judgment of dismissal.)**

The judgment is final for the purpose of appeal, and was entered January 11, 1993. Petitioner received no notice of dismissal, although the bank was notified. When petitioner found out about the dismissal it was too late to petition for a rehearing. Since petitioner never received a

hearing he was unlikely to obtain one in the future, and was unlikely to be successful in the face to the bias demonstrated by Judge Santead.

The following issues are to be raised on appeal: 1. Is C.R.S. §10-15-105, giving a five year statute of limitations after discovery, in actions to revoke probate applicable in this case, rather than C.R.S. §13-80-101. 2. Does a previous unsuccessful appeal, foreclose a subsequent action on different grounds? 3. Does the refusal of the presiding judge to consider petitioner's claim on its merits, dismissing the action without notice or hearing, constitute a violation of due process as guaranteed in amendment XIV of the Federal Constitution? 4. Are foreign wills probated in Colorado required to conform to the local rules of court regarding

margins on the printed page?

5. Are sanctions justified in this case, without notice or hearing, when they have been denied by four higher courts? There was no hearing, transcript or statement of decision in this case which is a principal reason for this appeal. No preargument conference is requested. February 14, 1993.

REBUTTAL TO OPPOSITION MOTION TO STRIKE AND DISMISS COMPLAINT 92CV1470, DIVISION 2, BOULDER DISTRICT COURT, HONORABLE MORRIS SANTEAD JUDGE, JANUARY 15, 1993, ROBERT A. LESLIE v. WILLIAM C. LESLIE, et. al.: Plaintiff Robert A. Leslie hereby opposes defendants REPLY TO OPPOSITION TO MOTION TO STRIKE AND DISMISS COMPLAINT and states the following in support of his position:

ARGUMENT

1. Plaintiff disputes opposing

counsel's allegation that "all of the issues raised by the plaintiff including the issue of fraud were determined by the probate court." In the decision of the Honorable Roxanne Bailin, there is no evidence she read plaintiff's opposition, let alone determined its merits, and this is a principal reason why the decision was appealed. Plaintiff himself was unaware of the nature of the fraud until one year later when it was discovered by consultation with document examiners. Opposing consul is mistaken that plaintiff bore the burden of proof to prove fraud in the execution of the will. The burden of proof was on the defendants to prove the proffered document was the last will and testament of Robert W. Leslie, according to C. R. S. §15-12-407, "Proponents of a will have the burden of establishing

prima facie proof of due execution in all cases." See also re Estate of Sebben, 151 Colo., 12 375 P2d 516 (1962). This proffered will would never have been probated in California Courts because the contents did not comport with the attestation clause, stating the testator's initials must appear on every page of the will, and because the margins of the document did not comply with the rules of court, which is the reason petitioner alleged collusion with the probate judge.

2. Plaintiff did not appear at the probate hearing because he did not receive proper notice through the postal system as required by C. R. S. §15-12-410. A letter was seen in the mailbox some six days prior to the hearing, without a postmark, with a certified mail receipt attached. This letter was taken to the postmaster

of the South Coast post office, who determined the letter had not passed through the mail. An affidavit to this effect was submitted to the court of appeal, and the postmaster mailed his own affidavit to the court, which ignored the affidavits, perjuring itself notification had passed through the postal system, and, "his agent" signed the certificate. This was patently false because plaintiff has no agent. Opposing consul is mistaken when she states no continuation of the hearing was requested; a continuation was requested on plaintiffs second submitted paper, and denied by the Honorable Roxanne Bailin. Plaintiff notes opposing consul, knowing they cannot prevail on the merits, employed this ploy a second time in their opposition, delaying mailing it to plaintiff for several days after filing it with the

court, so they may claim plaintiff's opposition was not filed timely. (Paragraph 7.) Plaintiff did not receive the opposition until December 12, and respectfully requests the court revise its rules, so that other litigants will not be deprived of their due process rights by such fraud. Opposing consul blames plaintiff for the delay in the probate of the will; is it opposing counsel who is at fault for his willful failure to provide proper notice.

4. CRS §13-18-101, defining a statute of limitations for fraud of three years states, "An action shall be filed in three years." It does not state the action has to be filed with this court.

6. Opposing consul states petitioners Further Declaration in Support of Recession Based on Fraud

is scandalous. This is incorrect because plaintiff carefully deleted all scandalous material, such as the fact defendants speeded the testator's death by withholding life support systems, from the brief.

92 CV 1470 OPPOSITION TO MOTION TO STRIKE AND DISMISS, BOULDER DISTRICT COURT DIVISION 2, HONORABLE MORRIS SANTEAD JR. JUDGE, ROBERT A. LESLIE v. WILLIAM C. LESLIE, et. al.

Plaintiff Robert Leslie hereby opposes defendants motion to strike portions of the complaint, for dismissal, and for costs, and states the following in support of his position:

ARGUMENT

Opposing counsel alleges this suit is an improper attempt to relitigate a matter which has been resolved in probate proceedings before

this court. The probate court merely stated the will was "self proving" which indicates it should be admitted to probate in the absence of allegations of fraud. Since petitioner believes, is informed and hereon alleges the will is fraudulent, he is entitled to his day in court before a jury to prove his allegation.

Petitioner was denied a hearing, even though his objection to probate was filed before the probate hearing, on the basis that a personal appearance was not made on six days notice. The Colorado statutes specifically state an action can be filed for a fraudulent will, and that a fraudulent will is an offense under the Colorado State Racketeer Influenced Corrupt Organization Act which does not have a statute of limitations.

The limitation of action cited by

opposing consul states," an action must be filed within three years." Since this matter has been continuously in the federal and state courts since probate was approved, the matter has been in continuous litigation without pause and an action has been repeatedly commenced. Also the statute does not apply to breach of fiduciary actions, and the probate of a forged will fits this category see Morgan v. Dain Bosworth, 545 Fed Supp 953 (D.Colo 1982); Elk River Associates v Huskin 691 P.2D 1148 (Colo. App. 1984).

This action is not res judicata as alleged by opposing consul because 1. The issue of the fraud was not decided or mentioned to the court on its merits. 2. Petitioner has been 92CV1470 denied the right of discovery, and a hearing to put forth his case, and a jury trial on the issue of the

validity of the will. This determination by the probate court if final, would violate petitioners right under the seventh and fourteenth amendments to the federal constitution guaranteeing a jury trial in all matters and promises due process of law in all civil litigation, which includes, but is not limited to discovery, interrogatories, trial by jury and a hearing. All of these rights have been denied petitioner.

Opposing consul cites Moore's Federal Practice which is inapplicable because this is a State and Not a Federal Action. In the cited cases plaintiff was allowed the right of discovery and a hearing. Petitioner disagrees with opposing consul's allegation that the action is improper because it allegedly is "not sanctioned by the Colorado Supreme Court." His

reasons are mentioned in the last paragraph of the preceding page. Opposing consul gives no citations allowing the Colorado Supreme Court to abrogate the rights guaranteed in Amendments VII and XIV of the Federal Constitution.

Contrary to the allegations in paragraph 5 of defendants brief, petitioner has continually attacked the validity of the Will, and has been denied a hearing. The first time 10 days before the probate hearing, and took the matter to the Colorado Supreme Court, and to the Federal Courts in Colorado and Oklahoma in an effort to preserve discovery rights only to be advised it was an improper forum.

As a seventh defense, opposing consul states Robert J. Leslie has not been served ad lacks jurisdiction of this court. Service was attempted

on Robert J. Leslie, who is avoiding service of process. A private investigator has been retained to serve him and the court will be notified when service has been effected.

Executed December 24, 1992, at Irvine, California.

COMPLAINT FOR RECESSION BASED ON FRAUD 92CV1470 NOVEMBER 30, 1992 JUDGE MORRIS SANTEAD, DISTRICT COURT BOULDER, COLORADO ROBERT A. LESLIE v. WILLIAM C. LESLIE, et. al.: Plaintiff complains of defendants and alleges:

1. Plaintiff is a citizen of the State of California. The scrivener of the Will, and the executor are Citizens of Oklahoma. Defendant William C. Leslie is a citizen of Golden, Colorado.

2. Defendant LLoyd Rowland is, and was at all times mentioned, a resident

of Bartlesville, Oklahoma.

3. Defendant Walter Barnes is now a resident of Tulsa, Oklahoma, but was formerly a resident of Bartlesville, Oklahoma.

4. Defendant William C. Leslie is a resident of Golden, Colorado.

5. The deceased, ROBERT WILSON LESLIE, was a resident of Boulder, Colorado.

6. Defendants Doe I through X inclusive, are sued herein under fictitious names. The true names and capacities are unknown to plaintiff; when the true names and capacities are ascertained, plaintiff will amend the complaint by inserting their true names and capacities herein. Plaintiff is informed, and believes, and hereon alleges, each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged,

and plaintiff's damages herein alleged were proximately caused by these defendants.

7. Plaintiff is informed and believes and hereon alleges at all times mentioned, defendants doe I through X were agents, servants, and employees of co-defendants, and in doing the things hereinafter alleged, were acting in the scope of their authority as such agents, servants, and employees with their permission and consent of their co-defendants. Defendants Doe I through Doe X inclusive are sued herein under fictitious names. The true names and capacities are unknown to plaintiff. When the true capacities are ascertained, plaintiff will amend his complaint to include their names.

8. On or about August 18, 1968, Eleanor C. Leslie, retained Walter

Barnes, to write her last will and testament.

9. On or about July 28, 1968, Robert W. Leslie, retained Walter Barnes to write his last will and testament.

10. In due course, Walter Barnes drafted the wills, which were signed and witnessed, but never delivered to the probate courts.

11. Then, before June 15, 1988, Walter Barnes drafted two reciprocal wills, purported to the last will and testament of Eleanor C. Leslie, and Robert W. Leslie respectfully, retyping the first four pages of the will, changing the beneficiaries, and in due course, the documents were delivered to Lloyd Rowland, and to the Boulder, Colorado probate Courts. The wills are obviously fraudulent because the initials on each page of the document, referred to in the attestation clause

of the will, are not present, and the spacing in the bottom margin, the left and right margin of the will is narrowed to reflect the fraudulent addition of the grandchildren to the will after it was signed.

12. Lloyd Rowland then submitted the wills for probate, knowing that they were fraudulent for the same reason, and because, he drafted a legal document, PETITION FOR PROBATE OF WILL AND APPOINTMENT OF EXECUTOR which lists beneficiaries of the true will, but not the fraudulent will.

13. This was done in conspiracy with William C. Leslie, a beneficiary under the will, and his children, in order to defraud plaintiff of his fair share of the estate. The William C. Leslie family is suspected of narcotics trafficing by the Federal Drug Enforcement Administration.

14. After the death of Eleanor Bertha Leslie in 1988, the petitioner requested a copy of this will from Lloyd Rowland, who promised to send a copy to my residence, but failed to do so. The matter was not pursued on the basis of false information by Lloyd Rowland, that Eleanor Leslie, had no probate assets in Oklahoma, and the father was the sole beneficiary under her will.

15. After father's death, petitioner requested copies of both wills, which were forwarded by David Rowland. These were examined and found to be fraudulent.

16. The scrivener was contacted and forwarded his copies of the fraudulent wills of Eleanor Bertha Leslie, and Robert Wilson Leslie. He lied to me the wills were authentic copies of their last wills and

testaments written in 1968.

17. Later, Betty Darlywimple of WESTAR Bank, sent a copy of mother's fraudulent will from the court record. The matter was appealed to the Oklahoma Supreme Court, but relief was denied on the basis the objection was not timely filed.

18. The matter of father's fraudulent will was taken through the Colorado Court system, but a hearing was denied because a personal appearance was not made on six days notice, even though objection to probate was filed on the basis of the fact the will was fraudulent prior to the probate hearing.

19. The matter was pursued through the Federal District Courts at Tulsa, Oklahoma, and Denver, Colorado, but the matter was dismissed because of improper forum.

20 In Addition plaintiff alleges a conspiracy against him as follows:

1. Perjury in the testimony of Lloyd Rowland before the Washington County probate court, the wills were the last will and testament of Eleanor Bertha Leslie.

2. Knowingly Submitting a fraudulent will for probate in Bartlesville, Oklahoma.

3. Conspiracy between William C. Leslie, David Rowland, and Walter Barnes, in Bartlesville, Oklahoma, and of the Leslie Children to submit a fraudulent will for probate in Golden, Colorado and Washington County, Oklahoma.

4. Submitting a fraudulent will for probate in Boulder, Colorado, and Washington County, Oklahoma.

5. Perjury on the Part of William

C. Leslie who lied under oath that the proffered document was the last Will and Testament of Robert Wilson Leslie.

6. Harassment and intimidation on the part of Robert E. Leslie to discourage plaintiff from filing this law suit.

21. Plaintiff intends service of the summons and complaint in this action to serve as notice of recession of any relationship with William Leslie's family and hereby demands that this family return the $200,000 taken under false pretenses, plus the fair value for litigation necessary to restore plaintiff's inheritance.

DECISION OF THE SUPREME COURT, STATE OF COLORADO, CASE NO. 94SC515, JANUARY 17, 1995, 89 PR 295, 93 CA0409 ROBERT A. LESLIE V WILLIAM C. LESLIE: Upon consideration of the petition for Writ of Certiorari, to the Colorado Court of Appeals, and after review of the record, the briefs, and the judgment of said Court of Appeals, IT IS THIS DAY ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

PETITION FOR CERTIORARI, THE SUPREME COURT, STATE OF COLORADO, CASE NO. 94SC515, JANUARY 17, 1995, 89 PR 295, 93 CA0409 ROBERT A. LESLIE V WILLIAM C. LESLIE: Appellant hereby petitions the Colorado Supreme Court for a Writ of Certiorari to determine whether the doctrine of Equitable Estoppel based on fraudulent concealment is applicable to a probate action, and

whether or not it is proper to tax attorney's fees and costs to appellant for an appeal questioning the validity of a will. Three determinations by the Court of appeal on the same facts gave inconsistent decisions regarding costs and action of your court is necessary to obtain uniformity of decision.

The probate distribution was appealed because the Honorable Judge Santead believed the appeal on 89CV2010, and 93 CA 185 was frivolous, notwithstanding the fact the appellate court's determination to the contrary, and taxed the total costs to appellant in violation of statute and case law. The judgment of the Court of Appeal 93CA0185 March 10, 1994 stated," Lastly defendants request that attorney fees and costs be imposed against plaintiff for bring this appeal. However, since

plaintiff's conduct appears neither egregious nor to have been unequivocally pursued in bad faith, we disagree that sanctions are appropriate here." In the petition for reconsideration this court invited an appeal to the Colorado Supreme Court, which indicated the appeal had merit. Since neither of the two decisions of the Colorado Court of Appeal determined the appeal to be frivolous, nor the two federal court decisions, judge Santead's distribution order which reflects his own personal opinion, reflecting his prejudice against pro-se litigants, that appellant filed a frivolous appeal in conflict with the opinions of these courts and statute and case law.

BACKGROUND OF CASE

Initially Appellant believed the will was forged because the testator's initials were not on the first four

pages of the will, as required by the attestation clause, retaining internationally famous document examiner, Andrea McNichol, to verify the authenticity of the signature. It was necessary to obtain copies of documents signed by the testator when he left the Phillips Petroleum Company, In order to obtain the necessary exemplars to make a determination regarding the will's validity, and the legal department refused to release the documents unless an action was filed in Oklahoma.

Similarly, testator Walter Barnes, in Tulsa, Oklahoma, refused to provide any information. An action was filed in the Federal District Court in Tulsa, Oklahoma in order to obtain this information, the only court in Oklahoma that would accept jurisdiction. The exemplars were duly forwarded in

response to subpoena, from this court, and interrogatories were mailed to Walter Barnes, Lloyd Rowland, and William C. Leslie. All three parties refused to answer the interrogatories but Walter Barns, scrivener, filed a response, perjuring himself that he had complied with all formalities, and witnessed the execution of the will. The action was dismissed before a motion could be filed to compel a response to the interrogatories.

A similar action was filed in the Federal Court in Denver, Colorado, because the appeal regarding the validity of the will was in the Colorado Appellate Courts, preventing discovery, and because the Colorado Probate court denied petitioner a jury trial in violation of Colorado Law and Federal Constitution Amendment VII. Plaintiff required discovery to determine the

facts regarding the execution of the will. Interrogatories were sent to William Leslie, who also refused to answer them, and the action was again dismissed before a court order compelling a response could be obtained. The exemplars were duly produced pursuant to subpoena, and the document examiner found the signature on the will was authentic.

Appellant then telephoned the witnesses that signed the will, who informed appellant they were not in the same room as the testator, when he signed the will, and they signed the will the next day, in their office, as was their custom, because Oklahoma law does not require them to witness the signing of the will, notwithstanding the declaration to the contrary in the will, and its attestation clause.

Appellant was not put on guard to

question this fact, because the wording in the final paragraph of page 6, and the first page of page 7 of the proffered will states," We the undersigned, do hereby certify and declare that the foregoing last Will and Testament, consisting of this page and the foregoing four (4) pages of typewritten matter bearing the handwritten initials of Robert W. Leslie was on the date thereof initialed, signed and subscribed by the said Robert W. Leslie, was on the date thereof **initialed, signed and subscribed by the said Robert W. Leslie in our presence and in the presence of each of us, was at the same time declared by him to each of us to be his last will and testament . . . "**

On Page 7 of the proffered will the witness declared under oath before the notary," **all of the said persons**

being by me first duly sworn, the said Robert W. Leslie, testator, declared to me and to said witnesses in my presence, that said instrument is his last will and testament . . . "

In addition, Walter Barnes, the scrivener enjoyed a confidential relationship with the testator, both because of the attorney client relationship, and because as a close friend and business associate, and as such, did not provide Appellant with a duty to inquire.

When the true facts were determined, appellant filed another action in the Boulder court, pleading an equitable estoppel or estoppel in pais based on the fraudulent declarations in the will and attestation clauses of the will. This action was dismissed by Judge Santead without notice or hearing, before the necessary affidavits could

be obtained, so the matter was appealed to your court Action 93CA0185, who affirmed the decision of the lower court but invited an appeal to the State Supreme court, which was done 94SC254. Appellant would point out California Courts will not dismiss an action unless opposing counsel sets the matter for a hearing because it violates the "due process" requirements of the Federal Constitution. Plaintiff, on studying the will, did not suspect that five people, including the scrivener and notary, would perjure themselves by attaching their signature to false legal declarations, a felony, and mistakenly believed the signatures were forged. Plaintiff only discovered the truth, when the document examiner told him the signatures were authentic, that he was placed on notice, and made further inquiry, that Plaintiff

discovered the witnesses were not in the room when the will was signed and that the signature was not witnessed, because this was not a requirement of Oklahoma law.

Appellant did not oppose the first distribution order, January 1993, because he was unaware of the precise nature of the fraud, regarding the will at the time the order was signed, but did so when the truth was discovered.

ARGUMENT

The opinion of the Court of Appeal on 93 CA 409 states, in the Federal Court action the court set forth six grounds for dismissal, which could reasonably justify a finding that the action was frivolous or groundless. The cumulative effects of the six grounds, in a Colorado state court, most assuredly constitute grounds for

a finding of a frivolous or groundless litigation." That is not the point.

The fact is the federal courts **did not find the action to be frivolous** and judge Santead and the court of appeal exceeded their authority in making this determination.

Petitioner is familiar with the Federal Rules of Court and considered them when filing his action. The honorable judge Santead and the court of appeal is in contempt of court for violating the decisions of these judicial bodies. Even if this statement was correct, which it is not, this determination is a violation of the equal protection clause of the fourteenth amendment of the Federal Constitution because it deprives litigants in Colorado courts access to federal courts. This is reinforced by the fact that Judge Santead's denial

of discovery and the right to a jury trial on the issue of the validity of the will, was the reason for the filing of the other lawsuits.

In The last paragraph on page six of the decision of the court of appeal, it justifies the taxing of costs solely on the unsupported allegation of opposing counsel," . . . reveals that the plaintiff has made no inquiry into the facts or the law, that the plaintiff does not believe that the pleading is 'well grounded in fact, . . . "

If the court of appeal had read appellant's opening brief it would have found twenty-six cited cases supporting his position. After spending 100 hours in researching his briefs, in the law library, and citing 44 cases in his opening brief, appellant believes his arguments to be well founded which is verified by the two other decisions

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of the court of appeal on this matter.

Page seven of the decision of the court of appeal states," The General Assembly promulgated the Colorado Probate Code for the basic purpose of promoting "a speedy and efficient system for settling the estate of the decedent . . . Much of petitioner's conduct . . . has resulted in the frustration of this basic purpose . . . " Petitioner would point out that courts are also to prevent probate of a fraudulent will, And that most of the delay was caused by Judge Santead refusing to consider 93 CV 1470 on its merits denying discovery, necessitating this appeal and the Federal actions.

Page seven of the court of appeals decision states," The trial court noted the lack of substance and groundlessness of petitioner's claims and defenses."

to in letters to Mr. Wade and John Holt and in the opposition to distribution now before the court in the Clerk's Transcript. This was justified By attorney Wade by the expiration of the statute of limitations.

Petitioner's promissory notes are not enforceable for the same reason, and additionally because their enforcement is outside the jurisdiction of this court. The notes were signed in California and mailed to Oklahoma, and an action to enforce these notes must be commenced in California. **Colo. App. 1991** Unless there is a particular place of payment/performance for contract, venue is only proper in county where defendant resides or county where plaintiff resides if defendant is served in that county. **Rules Civ.Pro., Rule 98(c) (1,2); App.Proc.,Rule 3.**

Resolution Trust Corp. v. Parker, 824 P.2d 102.

No action has been commenced in the county where defendant resides. If such an action were commenced it would be time barred by the statute of limitations. C.C.A.Colo. 1945. Generally, a negotiable instrument, payable on demand, becomes due immediately, and statute of limitations begins to run from its date of execution and not from the date of its demand. Gossard v Gossard 149 F2d. 111; Kirby v Bourg, 440 P.2d 151, 165 Colo. 500; Pepper v Hyman, 189 P2d 155, 117 Colo. 365. An action on a note is time barred after the lapse of six years from date of maturity of note. The court of appeal did not comment on these arguments although they were presented. Petitioner respectfully requests this court's decision regarding costs and

attorney fees, and for an order revoking probate, or for a jury trial so the issues may be decided on their merits. **PETITION FOR REHEARING, THE COURT OF APPEALS NO. 93 CA0409, TRIAL COURT NO. 89 PR 295 ROBERT A. LESLIE v WILLIAM C. LESLIE: MAY 4, 1994. Judge JONES, METZGER and Ney JJ.** Appellant hereby petitions for a rehearing on the grounds your decision is based on a mistaken interpretation of the facts and the law. The probate distribution was appealed because the Honorable Judge Santead believed the appeal on 89CV2010 was frivolous and taxed the total costs to appellant in violation of statute and case law.

This opinion was not reflected in the judgment of this court 93CA0185 March 10, 1994 which stated," Lastly defendants request that attorney fees and costs be imposed against plaintiff

for bring this appeal. However, since plaintiff's conduct appears neither egregious nor to have been unequivocally pursued in bad faith, we disagree that sanctions are appropriate here."

In the petition for reconsideration this court invited an appeal to the Colorado Supreme Court, which is inconsistent with a frivolous appeal. Since two decisions of the Colorado Court of Appeal did not determine the appeal was frivolous, nor the two federal court decisions, judge Santead's distribution order was in error because it was based on his opinion appellant filed a frivolous appeal and needed to be altered.

BACKGROUND OF CASE

ARGUMENT

Your decision states "Matters reviewed by that appeal may not be reviewed again here." This opinion is in

conflict with that of the Colorado Supreme Court in Glenn v Mitchel 207 P 84: Held, **"Upon proof of fraud or collusion in the procurement of a will, such judgment may be vacated at any time."** Furthermore, the issue of Equitable Estoppel has **not** been considered by this court, nor the fact the scrivener perjured himself in the Federal Action. This is important because the scrivener's testimony normally bears great weight in a probate action.

In the carefully considered decision, handed down by this court, March 10, 1994, CA 93 0185, page 2, paragraph 3 states," Plaintiff challenged whether the will was properly executed in his earlier action and is, therefore, barred from raising it in this action." Based on the legal doctrines of res judicata and collateral estoppel. Petitioner

believes the doctrine of equitable estoppel or estoppel in pais by fraudulent concealment estops defendant from application of this doctrine in this insistence.

The court points out in the final statement on page two that collateral estoppel bars a second action on a claim previously litigated if the party against whom the estoppel is asserted "if the party against whom the estoppel is asserted **had a full and fair opportunity to litigate the issue in the prior proceeding."** In fact, petitioner had only six days notice, and fraudulent concealment prevented the litigation of this issue in the previous hearing.

The doctrine of equitable estoppel by fraudulent concealment provides that a defendant is estoppel from exerting a statute of limitations

Plaintiff, on studying the will, did not suspect that five people, including the scrivener and notary, would perjure themselves by attaching their signature to false legal declarations, a felony, and mistakenly believed the signatures were forged.

Plaintiff only discovered the truth, when the document examiner told him the signatures were authentic, approximately nine months ago, that he was placed on notice, and made further inquiry, that Plaintiff discovered the witnesses were not in the room when the will was signed and that the signature was not witnessed, because this was not a requirement of Oklahoma law.

Appellant did not oppose the first distribution order, January 1993, because he was unaware of the precise nature of the fraud, regarding the

will at the time the order was signed, but did so when the truth was discovered.

Your opinion on page six states," In the Federal court action the court set forth six grounds for dismissal, which could reasonably justify a finding that the action was frivolous or groundless." This evaluation is unfair because appellant was denied discovery, and the suit was filed with the primary object to obtain the necessary exemplars of the testator's signature, which was eventually obtained. Your opinion on page six further states," The cumulative effects of the six grounds, in a Colorado State Court, most assuredly constitutes grounds for a finding of groundless and frivolous litigation." This opinion notwithstanding, none of the Colorado Courts found my appeal frivolous, except

that of Judge Santead, and appellant was encouraged to appeal the matter to the Colorado Supreme Court, which is inconsistent with your allegation of frivolous litigation.

Wests Colorado Law Review devotes approximately sixty pages to the doctrine of Equitable Estoppel, so in order to be consistent in your opinion, it would be necessary to alter several hundred of your decisions, or to show cause why the fourteenth amendment of the Federal Constitution, guaranteeing equal protection under the law, and due process of law is not enforced in your court.

Because Equitable Estoppel is recognized in Colorado Courts, appellant's appeals are not frivolous, and he requests a reconsideration of your decision regarding the affirmation of the Judgment of Judge Santead, and

your cited case law which is inapplicable. The pertinent Colorado case law regarding costs in appeals questioning the validity of the will are cited in Appellant's Opening Brief. **OPINION OF THE COURT OF APPEALS NO. 93 CA0409, TRIAL COURT NO. 89 PR 295 ROBERT A. LESLIE v WILLIAM C. LESLIE: AUGUST 4, 1994. Judge JONES, METZGER and Ney JJ.** Upon consideration of the petition for rehearing filed by the appellee's herein, the opinion is modified and the opinion as modified, petition for rehearing is denied. Metzger J. would grant. The petition for rehearing filed by the appellant herein, the opinion is modified and as modified, petition for rehearing is denied. It is ordered that issuance of the Mandate hereby be, and the same hereby is stayed to and including September 06, 1994, provided that if

a petition for Writ of Certiorari is timely filed with the Supreme Court of the State of Colorado, the stay shall remain in effect until disposition of the within cause by the Supreme Court.

OPINION OF THE COLORADO COURT OF APPEALS 93CA409, April 21, 1994, Judge JONES, METZGER and Ney JJ. concur, ROBERT A. LESLIE V WILLIAM C. LESLIE: In this proceeding for administration of the estate of the decedent, Robert Wilson Leslie, petitioner, Robert A. Leslie, appeals the supplementary order of final settlement and distribution entered by the probate court.

We dismiss the appeal in part and affirm the order. Initially the record reflects that two of the respondents as set forth in the caption, Margaret A. Leslie and David Leslie, were not represented by counsel before the

probate court. Also they received no notice of appeal against them. Accordingly, the appeal is dismissed as to them. C.A.R. 3(a)

Additionally, Walter Barnes Lloyd Rowland, and Bradley, Campbell, Carney & Madsen (a law firm), set forth as appellees by petitioner, are not reflected in the record as parties of interest in decedent's estate and are not proper parties to this appeal. Accordingly, this appeal is dismissed as to those parties C. A. R. 3(a).

Petitioner initially contends that the underlying will in fraudulent and that the probate court, therefore, erred in entering its final orders of final settlement and distribution. We disagree.

In an earlier appeal arising out of this estate matter, Leslie v. Colorado National Bank (Colo. App.

No. 89 CA2010, December 10, 1993)(not selected for official publication), a division of this court concluded this will had been properly executed and, thus, affirmed the orders of the probate court admitting the decedent's will to formal probate. See O'Brien v Wallace, 145 Colo. 291, 359 P.2d 1029 (1961). There, the division, noted with particularly, that petitioner was given sufficient notice of the hearing of October 12, 1989, on the issue of whether the will should be admitted to probate. See §§15-10-401(1)(a) and 15-12-403(1)(a), C.R.S. (1987 Repl. Vol. 6B) Petitioner attempts, once again, to have that issue raised here. A critical part of petitioner's claim in the previous case was the allegation that the will was fraudulent. There, both the trial court and this court resolved both

issues against petitioner. Matters resolved by that appeal may not be reviewed again here. See Dando Co. v. Mangini, 107 Colo. 107, 109 P.2d 1055 (1941).

Petitioner also contends that the probate court erred in charging certain litigation and administration expenses against his share of the distribution of the estate. We perceive no error.

The record reflects the final settlement and distribution of the estate here was delayed, and additional fees and costs were incurred, by petitioner's unsuccessful attempts to challenge the validity of the will and its final distribution. We have noted above petitioner's challenge in this court of earlier orders entered in this matter by the probate court. Following our disposition there, petitioner's petition for Certiorari

was denied by the Colorado Supreme Court on April 15, 1991.

Thereafter, in 1991, petitioner filed an action in the United States District Court for the district of Colorado (Civil Action No. 91-S-2123) challenging the validity of the will. That action was dismissed on September 29, 1992.

Following that dismissal, petitioner filed a separate civil action in the Boulder County District Court, No. 92CV1470, apparently based on fraud, challenging the validity of the will. That action was dismissed on numerous grounds. Petitioner appealed dismissal of that action to this court. A division of this court affirmed the dismissal, determining, inter alia, that petitioner had failed to request a hearing on respondent's motions to dismiss, that the issues raised

on appeal had been resolved in the earlier probate litigation, and that the appeal was barred by res judicata. Leslie v Leslie (Colo. App. No. 93 CA0185, March 10, 1994)(Not selected for publication.)

Finally, on or about February 24, 1993, after a hearing on the personal representative's petition here, and petitioner's objections thereto, See §12-12-100(1), C.R.S. (1987 Repl. Vol. 6B), the supplemental order of final settlement and distribution was entered. Although petitioner was given notice thereof in January 1993, he chose not to be present at this hearing.

As part of this order the probate court stated: "All personal representative and attorney fees in excess of those ordered to be paid out of the general estate [i.e., fees attributable to his unsuccessful

attempts to challenge this will and the orders of the various courts involved,] were and are charged against the distributive share of Dr. Robert A. Leslie, M. D. "

This order followed from a part of the original order for final settlement and distribution, dated December 11, 1991. In that order, in anticipation of the other cases to be filed by petitioner covering issues already litigated, the probate court stated that should such cases be filed, the personal representative "may apply to this court for an additional order or orders regarding the payment and burden of additional expense."

As to whether the litigation and administration expenses attributable to the attempts of petitioner to challenge the will and its final

distribution were appropriately charged against the petitioner's distributive share, there is no Colorado statutory or case law. However, we are persuaded by the cases from other jurisdictions that fees and expenses may be so collected.

In Webbe v First National Bank and Trust company., 487 N. E.2d 711 (Ill. Dist. Ct. App. 1985), one of several beneficiaries of a trust sued unsuccessfully in a suit that the court found to be "groundless and brought without reasonable cause." The appellate court in upholding the charging of the resultant legal fees and administrative costs against only the beneficiary's distributive share, stated: When one of several beneficiaries brings essentially groundless and unsuccessful litigation against a trustee the purpose of which

is to benefit only himself, no reason suggests itself why the other beneficiaries, who did not join with him, sought no relief and had no voice in the conduct of the case, should bear the expense with the initiating beneficiary. If such were not the case, a beneficiary could assault will and trust provisions attempting to increase his individual shares secure in the knowledge, if he was unsuccessful, the cost would be borne by the other beneficiaries equally and not recovered solely out of his share of the party seeking to further his own ends. This would not seem to be just. Webbe v. First National Bank and Trust. supra 487 N. E.2d at 714; see Dayton v Conger, 448 So.2d 609 (Fla. Dist. Ct. App 1984; Re Estate of Campbell, 46 Haw. 475, 382 P.2d 920 (1963); Boston Safe Deposit &

Trust Co. v. Stone, 348 Mass. 345, 203 N. E.2d 547 (1965); In Re King's Estate, 336 Pa. 1, 7A.2d 297 (1939).

The Colorado Probate Code is Equitable in nature. Section 15-10103 C.R.S. (1987 Repl. Vol. 6B) It does not specifically provide for payment of administrative expenses and attorney fees from an individual's distributive share, even if the heir has individually caused such costs to be incurred. Nevertheless, we conclude that the probate court's order of payment may be upheld here under the circumstances attending petitioner's relentless pursuit of the very same issues in three separate trial courts, in both the state and federal jurisdictions, and in three appeals to this court. Section 13-17102, C.R.S. (1989 Repl. Vol. 6A), provides that in any civil action "of any nature" a party asserting

a claim or defense may have fees imposed against such party if the claim or defense being asserted is frivolous and lacking in substantial justification. Thus, the costs imposed by the probate court here must be viewed in the context of the findings of the probate court, and the other courts involved, concerning whether the extraneous litigations unsuccessfully pursued by petitioner and leading to the additional costs were substantially lacking in justification. In the federal court action, the court set forth six grounds for dismissal, any one of which could reasonably justify a findings that the action was frivolous or groundless. The cumulative effects of the six grounds would, in a Colorado state court, most assuredly constitute grounds for a finding of groundless or frivolous litigation.

In the separate Boulder district court action, the trial court summarily dismissed petitioner's action, adopting as justification all of the grounds set forth by the respondents as to why the complaint should be dismissed. One such ground was as follows: The complaint, taken together with the Judgment of the Colorado Court of Appeals in Case No. 89CA2010, and with the federal district courts' (sic) orders of dismissal, reveals that the plaintiff has made no inquiry into the facts or the law, that the plaintiff does not believe that the pleading is 'well grounded in fact' that the legal theory asserted in the complaint is not based on existing legal principles or a 'good faith argument' for the modification of existing law, and that the pleading was filed for

the purpose of causing delay and harassment and an increase in the cost of litigation, See Henry v. Kemp 829 P.2d 505 (Colo. App. 1992); the plaintiff should thus be required to pay the defendants fees and costs pursuant to C.R.C.P. 11 and C.R.S. §1317-102.

Thus, by inference, the trial court found that action to be frivolous and groundless. We have noted above that on appeal of that action a division of this court affirmed the trial court, although it declined to award attorney fees for that separate appeal.

Finally, throughout the extensive litigation of this matter, including two appeals, the trial court has noted the lack of substance and groundlessness of petitioner's claims and defenses, thus implicitly finding that his numerous actions have been frivolous.

The general assembly promulgated the Colorado Probate Code for the basic purpose of promoting a "speedy and efficient system for settling the estate of the decedent and making distribution to his successors." Section 15-10-102(1)(c), C.R.S. (1987 Repl. Vol. 6B); In Re Estate of Dire, 851 P.2d 271 (Colo. App. 1993). Much of petitioner's conduct in initiating and prosecuting needless and insubstantial litigation has resulted in the frustration of this basic purpose and the possible depletion of the assets of the estate. Accordingly, and in the light of the findings of the several courts which have been forced needlessly to consider this matter, we cannot say that the probate court here abused its discretion in awarding against the petitioner's distributive share the administrative costs and legal

fees incurred by the estate in defending against the unsuccessful and groundless litigation in this and the two other cases that concerned, principally, the same issues that had been previously resolved. See Webbe v. First National Bank and Trust Co., supra. We conclude that petitioner's other contentions are without merit. We decline to award attorney fees and costs as to this appeal. The order of the probate court is affirmed. This appeal is dismissed as to Margaret A. Leslie, David Leslie, Walter Barnes, Lloyd Rowland, and Bradley, Campbell, Carney & Madsen. Judge Metzger and Judge Ney concur.

APPELLANT'S OPENING BRIEF 93CA409, COLORADO STATE COURT OF APPEAL ROBERT A. LESLIE VS WILLIAM C. LESLIE 89PR295 JUNE 7, 1993 Judge JONES, METZGER and Ney JJ.:

Plaintiff disputes the validity of

the will of his father, Robert W. Leslie, admitted to probate October 12, 1989, by the Boulder District Court, Case No. 89PR295. The matter was appealed to the Court of Appeal, 89 CA 2010, on the basis the testator's initials were not on the first four pages of the will as indicated by the attestation clause, and that Judge Bailin refused a continuance, notwithstanding the fact petitioner had not received proper notice through the mail. This matter was unsuccessfully submitted to the Colorado Supreme Court.

Initially, plaintiff believed the signature to be forged, retaining internationally famous document examiner, Andrea McNichol, and others. Discovery was delayed, owing to the difficulty in locating information dating back to 1968.

NATURE OF FRAUD

The first four pages of the will were retyped after the will was signed, adding the adopted grandchildren in the will, contrary to the testator's intention. The required additional wording caused crowding of the margins of the altered document, contrary to the scrivener's usual practice. It is a matter of petitioner's personal knowledge that the scrivener of the will is very careful and meticulous regarding grammar, punctuation and spacing of the legal documents he drafts, and the first four pages of the proffered will did not follow these rules, although the fifth page did so.

This knowledge was based on inspection of legal documents drafted by Walter Barnes, for Philblack Limited, in Bristol, England, where my father was

employed as the European technical representative for the Phillips Petroleum Company. This opinion is supported by Phillip Arnold, a vice-president of the Company, supervisor of the testator, and Walter Barnes.

Additional grounds consist of failure of execution, the witnesses being absent from the room of the testator, when the will was signed, contrary to the facts recited in the attestation clause of the will; the fact the will conflicted with a notarized declaration of testator, filed in Washington County District Court, three months prior to his death; the fact the terms of the will drastically differ from two previous wills, and the testators intentions; and the fact of undue influence on the testator's wife by William, a beneficiary under the will.

THE COURT UNLAWFULLY TAXED LEGAL FEES AND COSTS AGAINST APPELLANT: Then, having made up his mind without knowing the facts, the honorable Judge Santead, without plaintiff's authorization, hired an "expert," of opposing counsel's choosing, billing plaintiff for his testimony, taxing costs, and attorney fees against plaintiff, in a star chamber proceeding, on the false premise that petitioner's appeal was frivolous, and his mistaken belief that the losing party should be taxed all expenses, contrary to statute and case law, and is a main reason for this appeal.

AWARDED ATTORNEY FEES ARE EXCESSIVE

92CV1470 DISMISSAL VIOLATED PETITIONER'S DUE PROCESS RIGHTS. Contrary to the opinion of the Honorable Judge Santead, the arguments for revocation of probate are soundly based in statute, and case

law; his summarily dismissal of petitioner's pleadings, without reaching their merits, and his uncritical acceptance of opposition's pleadings, with their erroneous interpretation of statute and case law, is a violation of petitioner's due process rights guaranteed in U.S. Constitution amendment XIV; Const., art 2 §25, 1967 perm. supp., C.R.S., 66-29-14. "Due process of law" affords a hearing before it condemns, and gives judgment only after trial. People v Max 198 P. 150,70 Colo. 100. Access to the courts of the United States is a constitutional right guaranteed by due process clause of fifth and fourteenth amendments. U.S.C.A. Const. Amendments V, XIV; Silver v. Cormier, 529 F.2d 161; Jones v Hildebrandt, 550 P2d., Certiorari granted 429 U.S. 1061. Due process always implies hearing or trial and

judgment. Const. art 2, §25. La Planta River & Cherry Creek Ditch Co. v. Hinderlider 25 P2d.187. **REASONS FOR APPEAL** Petitioner disputes the validity of the will, which must be determined by a jury trial, which has been denied plaintiff, notwithstanding his multiple litigation. If probate is revoked, the distribution is in error, rendering Judge Santead's proposal to appeal the dismissal of 92 CV 1470, and allowing the distribution of 89PR295, unacceptable. Even if probate is not revoked, certain aspects of Judge Santead's distribution, are contrary to statute and case law, necessitating this appeal.

REBUTTAL TO SUBMITTED AUTHORITY SUPPORTING TAXING ATTORNEY FEES AGAINST APPELLANT

The honorable Judge Santead justifies the taxing of casts, and opposition attorney fees, on the brief, statutory

and Case Law Submitted by Attorney James Wade, arriving only three days prior to the hearing, a due process violation not tolerated in California courts.

In Re King's Estate, 336 Pa. 1,7 A.2d 297 (1939), the appellant objected to the trustee's accounting, and not to any principal of law, the appeal being properly dismissed. Trustee is not a party to this action. This is irrelevant to the case at bar in which petitioner has made no objections to trustee's accounting. Petitioner's objections are directed at the illegal rulings of the Honorable Judge Santead, and his denial of petitioner's due process rights.

In Boston Safe Deposit Co vs Stone, 348 Mass. 345, 203 N. E.2d. 547. beneficiary objected to trustee's decision as to value of corporate

shares, and not on a question of law. Appeal was improper. Again this is irrelevant to issue at bar. Trustee is not a party to this action, and no objections were made to trustee's evaluation of corporate shares or accounting. Petitioners objections are directed at the illegal rulings of Judge Santead, and his denial of petitioner's due process rights.

In Cleveland v Second Nat'l Bank & Trust, 149 F2d 466. A remainderman brought suit against trustee for mismanagement, and not a question of law. Again this is irrelevant to issue at bar. No objections made to trustee's accounting. Petitioners objections are directed at the unlawful rulings of Judge Santead, and his denial of petitioner's due process rights. In Patterson v. Northern Trust Company 286 Ill., 564, 122 N.E. 55 a

beneficiary brought suit against trustee for an accounting of trust assets. Suit was frivolous and not based on questions of law. No objections made to trustee's accounting, and the trustee is not a party to this action. Again, this is irrelevant to issue at bar. Petitioners objections are directed at the rulings of Judge Santead, and his denial of petitioner's due process rights.

In Re Campbell's Estate 46 Hawaii, 475, 362 P2d 920, a beneficiary sought to have all the trustee's removed and successor trustees appointed, was not based on matters of law, and was frivolous. Again this is irrelevant to issue at bar. No objections made to trustee's accounting. Petitioner's objections are directed at the illegal rulings of Judge Santead, and his denial of petitioner's due process rights.

Trustee is not a party to this action.

In Hamilton v Neilsen, 678 F2d. 709. the beneficiary sought to surcharge executors for a breach of their investment duties; no questions of law involved. Again this is irrelevant to issue at bar. No objections made to trustee's accounting, and he is not a party to this action. Petitioners objections are directed at the rulings of Judge Santead, and his denial of petitioner's due process rights. This case supports plaintiff. "3 Page on Wills § 26.148, at 355 "it is error for a court to tax attorney's fees against specific devisees or legatees."

In Webb v. First National Bank and Trust Co of Barrington 487 N. E. 2d. 711, The beneficiary brought a groundless suit against the trustee.

Trustee is not a party to this action, and no objections were made to his accounting. Again this is irrelevant to issue at bar. Petitioners objections are directed at the rulings of Judge Santead, and his denial of petitioner's due process rights. Also, the court cited petitioner for repeated perjury. The court pointed out," An attorney's fee cannot be charged against a defeated plaintiff suing a trustee as beneficiary absent statutory authority," Patterson v. Northern also supports plaintiff's position.

In Dayton v Conger 448 So.2d 669, the decedent's spouse sought to change the trustee motivated by undue influence. Again this is irrelevant to issue at bar. No objections made to trustee's accounting, nor were any attempts made to remove trustee, who

is not a party to this action. Petitioners objections are directed at the rulings of Judge Santead, and his denial of petitioner's due process rights. The court pointed out," statute that provided for award of fees for services rendered to an estate by attorneys did not authorize imposition of personal liability upon the beneficiaries for the trustee's attorney fees." Wests F. S. A. §733.106.(3,4). Sanchez v Sanchez, 435 So. 2d 347.

HELLER V FIRST NATIONAL BANK OF DENVER Colo. App 657 p2d. 992, referred to by attorney Wade, refers to a breach of trust action filed by beneficiary against trustee. Again this is irrelevant to issue at bar. Trustee is not a party to this action, and no objections made to his accounting. Petitioners objections are directed at the rulings of Judge Santead, and

his denial of petitioner's due process rights.

In summary, the honorable judge Santead, and the brief of James Wade has failed to produce a single instance in statute or case law justifying the taxing of attorney fees and costs in a probate action questioning the validity of a will.

CASE LAW SUPPORTING PETITIONER'S POSITION REGARDING ATTORNEY FEES AND COSTS.

Webb vs First National Bank and Trust Co 487 N. E. 2nd, p713, citing Brown v Commercial National Bank of Peoria, 237 N. E. 567aff'd 247 N.E.2d. 894. Stated there was no basis to charge attorney's costs to only his share of the costs, because it was not vexatious, groundless, or brought for harassment, and no justification exists for charging such costs. It

cites Kerner v Peterson, 12 N. E. 2d. 884; Hamilton v Neilsen 678 F2d 709,714, does not allow assessments of costs or charging attorney's fees against the unsuccessful party unless the claim was groundless or vexatious. In Patterson v Northern Trust Co. 122 N.E. 55 the Illinois Supreme Court held: An attorney's fee cannot be charged personally against a defeated plaintiff using trustee as beneficiary, absent statutory authority. "Statute that provided for award of fees for services rendered to an estate by attorneys did not authorize imposition of personal liability upon the beneficiaries for the trustee's attorney fees." Wests F. S. A. §733.106.(3,4). Sanchez v Sanchez, 435 So. 2d 347. "An attorney's fee cannot be charged against a defeated plaintiff suing a trustee as beneficiary

absent statutory authority," Patterson v. Northern Trust 122 N.E. 55. "3 Page on Wills § 26.148, at 355 "it is error for a court to tax attorney's fees against specific devisees or legatees."

If appellant prevails on the issue of the validity of the will, the estate would profit significantly, due to the reduction of attorney fees and administration costs. This fact justifies the taxing of attorney costs against the corpus of the trust: Re Boris v. Korry Testamentary Marital Deduction Trust for Wife 765 P2d. 484; Plaintiff did not prevail; fees and costs taxed against estate. Re Cooper, 28 Wis(2d) 391, Husband not included as couple were preparing for divorce. Costs and fees taxed against estate. Dyer v State, 331 NC 374, 416 SE(2d), alleged invalid will, plaintiff lost,

fees and costs taxed against estate. Re Estate of Flaherty, 484 NW(2d) 515., attorney fees taxed against estate; Chandelier v. Ringstaff, 786 SW(2d)41; Dannuck v. Mosser, 546 NE2d. 1291 in trying to probate a prior will costs and attorney fees taxed against estate.

Propriety of allowance to complaining beneficiary upheld in: Ewing v First National Bank, 76 SE2d. 791, a remainderman questioned propriety of long term lease. Raser v Johnson, 132 NE2d 819, a charitable institution had legacy, fees and costs taxed against estate; Orme v Northern Trust Co.,172 NE2d 413, ambiguity in will regarding children and grandchildren; losers awarded fees and costs; Baum vs. Continental Nat. Bank & Trust Sanchez, 435 So. 2d 347. "An attorney's fee cannot be charged against a defeated plaintiff suing a trustee as beneficiary

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360 SW2d 652, a Remainder man sought to stop sale of trust assets. Losing party awarded fees and costs. Croates v Croates 316 SW2d 875 involved dispute over trust agreement; loser given attorney fees and costs. Re Matthew's Trust, 111 NE 2d.731; a dispute over terms of trust loser awarded attorney fees and costs. In **Re Thorn's Trust 167 NYS2d 211,185 NYS2d 803,158 NE2d 499; Heir sued estate regarding validity of will and was given attorney fees and costs.** Lloyd v Campbell 196 NE2d 786 sued over terms of trusts. Loser awarded attorney fees and costs. In Peoples Nat. Bank v Jarvis, 364 P2d. 436 the heir sued regarding using estate to pay medical expenses of a beneficiary. Re Estate of McClean, 177 NW2d 874, the beneficiary sued regarding sale of trust assets. Costs and attorney fees awarded against

estate. Other citations omitted in the interest of brevity.

In the cited 26 cases the losing party was awarded attorney fees and costs. In None of the cases cited by attorney Wade and Judge Santead, was there a question of law or of the validity of a will.

APPELLANT'S PROMISSORY NOTES UNENFORCEABLE Another error of law in the distribution schedule proposed by attorney Wade and signed by Judge Santead is in taxing the promissory notes of appellant against his share of the estate, while not taxing William's promissory notes against his share of the estate. This was objected to in letters to Mr. Wade and John Holt and in the opposition to distribution now before the court in the Clerk's Transcript. This was justified By attorney Wade by the

expiration of the statute of limitations.

Petitioner's promissory notes are not enforceable for the same reason, and additionally because their enforcement is outside the jurisdiction of this court. The notes were signed in California and mailed to Oklahoma, and an action to enforce these notes must be commenced in California. **Colo. App 1991** Unless there is a particular place of payment/performance for contract, venue is only proper in county where defendant resides or county where plaintiff resides if defendant is served in that county. Rules Civ.Pro., Rule 98(c) (1,2); App.Proc.,Rule 3. Resolution Trust Corp. v. Parker, 824 P.2d 102.

No action has been commenced in the county where defendant resides. If such an action were commenced it

would be time barred by the statute of limitations. C.C.A.Colo. 1945. Generally, a negotiable instrument, payable on demand, becomes due immediately, and statute of limitations begins to run from its date of execution and not from the date of its demand. Gossard v Gossard 149 F2d. 111; Kirby v Bourg, 440 P.2d 151, 165 Colo. 500; Pepper v Hyman, 189 P2d 155, 117 Colo. 365. An action on a note is time barred after the lapse of six years from date of maturity of note.

For the reasons advanced and on the basis of the authorities stated, petitioner respectfully requests this court's decision regarding costs and attorney fees, and for an order revoking probate, or for a jury trial so the issues may be decided on their merits

SETTLEMENT AND DISTRIBUTION, 2-24-93, HONORABLE JUDGE MORRIS SANTEAD; This matter came on for a hearing February 24, 1993 on the petition of Colorado National Bank of Denver, personal representative, for a supplemental order of final settlement and distribution of the estate.

Notice was given to all interested persons on or about January 29, 1993. Based upon a prior order of this court interested persons were requested to file written objections, if any, on or before ten days prior to the date of the hearing. One such objection was so filed, that is by the decedent's son, Robert A. Leslie, M. D. The bank filed a written response to Dr. Leslie's objection. At the hearing the bank was represented by John S. Holt, trust officer, and James S. Wade, esq. of Wade Ashe Woods & Hill, P. C.; the

decedent's son, William Leslie and his children were represented by Laura J. Vogelsgang, Esq. of Bradley, Campbell Carney and Madsen. Dr. Robert A. Leslie did not appear.

Based upon the bank's petition, the statements of counsel, and following a review of and consideration of the objection instrument filed by Dr. Robert Leslie and the banks response, the court finds and concludes as follows:
1. The Colorado National Bank is the duly appointed and acting personal representative of the above estate.
2. In response to the bank's original petition for final settlement of this court, following notice and hearing, entered its Order on December 11, 1991, approving the bank's final accounting and ordered final settlement and distribution. 3. The court's order dated December 11, 1991 contains the

following provision: The Court further orders: that, in the event that Dr. Robert A. Leslie, M. D., a son of the decedent completes the commencement of an action in the Federal District Court for Colorado in this court, or in any other court, questioning the validity of the decedents will or the administration of this estate, the bank may withhold distribution of the estate as herein ordered and may apply to this court for an additional order or orders regarding the payment and burden of additional expense.

4. Dr. Robert A. Leslie, M. D. did, in fact, commence of an action in the Federal District Court for Colorado questioning the validity of the will which had previously been admitted to formal probate by this court.

5. The petitioner bank, which was named as a party-defendant in the Federal

Court Action, retained the law firm of Bradley, Campbell, Carney and Madsen (And later the law office of T. J. Carney) to defend the action. 6. The federal district court ultimately granted the defendant's threshold motion to dismiss the action. Dr. Robert A. Leslie M. D., following the dismissal of the Federal District Court Action, commenced a separate civil action (92 CV 1470) in Boulder District Court against his brother, William Leslie, and members of the William Leslie family and others. The bank has been put on notice that this action has been dismissed with the court leaving open the awarding of sanctions against Dr. Leslie. 8. On account of the Federal District Court Proceedings the petitioner-Bank, as provided for in the December 11, 1991 order, did not make full distribution of the estate

as authorized by this order for final settlement and distribution. The bank did, however, make several pro-rata partial distributions. 9. Since the date of the December 11, 1991 order, on account of the Dr. Robert A. Leslie M. D. federal court litigation, the bank has continued to administer the estate. 10. The prior December 11, 1991 Order approved the bank's accounting through the third quarter of 1991, that is through the end of September 1991. 11. Attached to the bank's petition for a Supplemental order of final settlement was a copy of the bank's accounting for the estate commencing September 30, 1991 and concluding December 31, 1992 (EXHIBIT A). The bank has separately accounted to the beneficiaries on a periodic basis. 12. also attached was an exhibit containing a summary of the income

received on the various assets listed on the prior schedule of final distribution and also summarizing the expenses paid since September 30, 1991, primarily income taxes, fiduciary fees and attorney fees. (EXHIBIT B).

13. Also attached to the petition was an amended and supplemental schedule of Distribution (EXHIBIT C). Page 1 thereof contained a summary of the present assets of the entire estate available for distribution including the cash balance on December 31, 1992. This cash balance was reduced by a partial distribution made on or about January 20, 1993 as reflected on page 9 thereof. Pages 2 through 6 reflected the proposed cash and asset distribution for each of the beneficiaries of the estate. Pages 7 and 8 contain notes regarding the schedule of distribution. Page 9 reflected details of an

additional partial distribution made by the bank on or about January 20, 1993. The various partial distributions to Dr. Robert A. Leslie have been made to a separate, segregated account at Colorado National Bank of Denver maintained for his sole benefit. 14. In connection with these exhibits, the following accounting principles were properly applied by the bank: a. Income and expenses were allocated, to the extent possible, on an asset by asset basis and credited to or charged against the beneficiary to whom the asset was distributable under the prior court order. b. Unallocated income and expenses were netted and credited to the beneficiaries on a pro-rata basis, that is one-fifth each. c. The legal fees incurred and paid both to Wade Ash Woods and Hill, P. C. and to Bradley, Campbell et al.

following the prior order of court would not have been incurred, but for the litigation commenced and processed by Robert A. Leslie, M. D. in the Federal District Court. Consistent with prior orders of this court, those expenses are charged solely against the share of DR. Robert A. Leslie, M. D. d. An estimate of final attorney fees for processing this petition and obtaining a supplemental order of final settlement and distribution was $2500. If the actual fee, based upon time is less, then the excess should be refunded and distributed. Since additional attorney fees since December 11, 1991 have been charged against the account of Dr. Robert A. Leslie, any refund will be to his account. A $5,000 reserve is properly created for these fees and any additional expenses. All, or the unused

portion, of this reserve will be credited to the Dr. Robert A. Leslie account. 15. There is ample precedent for burdening Dr. Robert A. Leslie's share of the estate with the litigation and administration expenses attribituable to his groundless and unsuccessful attempts to relitigate the validity of his father's will. In Re King's Estate, 336 Pa. 1,7, A.2d 297 (1939).;Boston Safe Deposit Co. v Stone, 348 Mass 345, 203 N.E.2d 547 (1965); Cleveland v Second Nat'l Bank & Trust Co. 149 F.2d 466 (6th circ. 1945; Patterson v Northern Trust Co. 286 Ill.,564 122 N.E.55; in Re Campbell's Estate, 46 Hawaii 475; Hamilton v Neilsen, 678 F.2d 709 (7th circ. 1982); Webbe v First National Bank and Trust Co of Barrington, 139 Ill.App3d 806; Dayton v Conger, 448 So.2d 609. The bank had administered

the estate in good faith and, in particular, has acted in good faith in successfully resisting Dr. Leslie's appeals of this court's formal order of probate to the Colorado Court of Appeals and the Colorado Supreme Court and in successfully moving the United States District Court for the District of Colorado to dismiss Dr. Leslie's complaint in that court. 16. There is no merit in Dr. Leslie's other objections. a. He urges that the closing of the estate be stayed on account of his stated intention to appeal the dismissal of the separate civil action against his brother, William (and other family members) to which the estate and personal representatives were not a party. The probate and civil cases are separate, and an appeal of the civil action does not preclude the closing

of the estate. b. Dr. Leslie's apparently suggests that federal regulation Z prevented the Bank as personal representative from inventorying and administering promissory notes, presumably from Dr. Leslie to his father, as part of the estate. The inventory, administration and distribution of the notes was reflected in the bank's final accounting and schedule of distribution, which had already been approved by this court's order dated December 19, 1991. In addition, there is no evidence that the family notes were executed in connection with the extension of consumer credit to be repaid in installments all as required by the Federal Truth in Lending act.

WHEREFORE, IT IS ORDERED AS FOLLOWS:

1. The bank's supplemental accounting is approved. 2. The remaining estate

assets are ordered to be distributed pursuant to the six pages amended and Supplemental Schedule of Final Distribution. 3. The Colorado National Bank of Denver, Personal representative, is fully and finally discharged for its administration and distribution. 4. The objections of Dr. Robert A. Leslie are dismissed. Dated this 24, day of February, 1993. MORRIS W. SANTEAD JR. DISTRICT JUDGE.

OPPOSITION TO DISTRICT COURT BOULDER COLORADO ESTATE OF ROBERT W. LESLIE, 89PR295, FEBRUARY 6, 1992, MORRIS SANTEAD JUDGE:

Plaintiff Robert Leslie hereby opposes executors petition for SUPPLEMENTAL order of final settlement and distribution on the following grounds:

1. This matter is not in the jurisdiction of this court because

an appeal has been filed in the Colorado Court of Appeal, 93 CA 0185, from the judgment of 92 CV 1470.

2. Plaintiff disputes the legality of paying defendants legal fees and court costs, and appeal costs from decedents estate, levying them on plaintiff. It is a fundamental principal in litigation that each side bears its own attorney's fees. Said bank and law firm is assuming the role of advocate, which is incompatible with their fiduciary responsibility. This assessment is unlawful, in Colorado, in Re Estate of Schleicher 794 P (2d) 1094, HELD: While Colorado Statute allows payment of attorney fees out of joint party accounts such accounts are off limits to executor absent a showing of good faith in incurring expenses. Such a Showing has not been forthcoming. See Also

Proudfit v Coons, 137 Colo 353, P(2d) 273. Page §26.148 points out," A preliminary allowance of attorney's fees can be made only after a hearing." Such a hearing has been denied plaintiff. In re Greenstone, 129 NJeQ 591, 20 A (2d) 349. Page, points out in §26.147, p 340," A court of pure probate jurisdiction has, apparently no authority to apportion the costs in its discretion."

3. Adding insult to injury opposing consul proposes to assess penalties against plaintiff, using estate funding to sponsor this motion, which is a conflict of interest. The court decision notwithstanding, the validity of the will is suspect: The testator's initials are not present on the will as required by the attestation clause. The margins of the will do not conform to the rules

of court, which is suspect since the will was prepared by experienced counsel. The terms of the will are highly unorthodox. Petitioner has been subject to numerous illegal threats from Robert J. Leslie not to contest the will, probably being sent by the other male members of the Leslie family. The presiding judge demonstrated a lack of familiarity with probate law, §15-10-106, in indicating my suit was time barred by the statute of limitations, which is a main reason it was appealed. It is to be noted the Two Federal Courts denied sanctions, as did the Oklahoma Supreme Court, The Colorado Court of Appeal, and the Colorado Supreme Court, who held petitioner had made a prima facie showing, and are more knowledgeable in law than the presiding judge.

4. Mr. Wade and Mr. Holt ignored

petitioners objections, including the promissory notes in the estate.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO, R. A. LESLIE vs. COLORADO NATIONAL BANK OF DENVER, ET. AL. 91-S-2123, JUDGE DANIEL B. SPARR, SEPTEMBER, 29, 1992: THIS MATTER comes before the court on numerous motions by all of the defendants for judgment on the pleadings or for dismissal, among other things.

A motion for judgment on the pleadings under Fed. R. Civ. P. 12(c) is treated as a motion to dismiss under Fed. R. Civ. P. 12(b)(6). Mock v. T. G. & Y. Stores Co. 971 F.2d 522___, 1992 WL 17163*5(10th Cir. July 24, 1992; Bishop v. Federal Intermediate Credit Bank of Wichita, 908 F.2d 658, 663 (10th Cir. 1990). A complaint should be dismissed only when it appears that the plaintiff can prove no set of facts

in support of the claims that would entitle plaintiff to relief, even when all well-pleaded allegations in the complaint are accepted as true and construed in the light most favorable to the plaintiff. Mock. F.2d ___, 1992 WL 171673 at * 5.

The court having reviewed the motions, the briefs filed in opposition, the applicable law, and being fully advised in the premises, finds and concludes that dismissal is required for several reasons: First, the court lacks jurisdiction over this civil action because complete diversity is lacking, no legitimate Federal question is alleged, and the proper jurisdictional amount in controversy is not alleged; second some of the defendants named in the caption have no allegations made against them in the complaint, while some of the defendants who have

been served with the complaint are not named in the caption; third each of the issues that the plaintiff seems to complain of has been previously litigated; fourth, this court has no authority to rescind a probate order previously unsuccessfully appealed in the state court, or to grant the plaintiff the other relief he seeks, and finally the plaintiff fails to state any valid claim for relief against any of those defendants.

As to the defendants' requests for rule 11 sanctions, the court declines to impose sanctions against plaintiff at this time. However, the plaintiff is put on notice that his continued pursuit of these claims in federal court may well be considered unwarranted, in bad faith, and subject to sanctions. September 29, 1992.

(3)

Supreme Court, U.S.
FILED
APR 20 1995
OFFICE OF THE CLERK

No. 94-1679

In The

Supreme Court of the United States

October Term, 1994

ROBERT A. LESLIE,

Petitioner,

v.

WILLIAM C. LESLIE,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeals Of The State Of Colorado

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Does the Petition raise any issues within Supreme Court jurisdiction?

2. Has Petitioner adequately preserved his constitutional issues for Supreme Court review?

STATEMENT PURSUANT TO RULE 29.1

Respondent is not a corporation and has no parent companies, subsidiaries or affiliates.

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No. 94-1679

In The

Supreme Court of the United States

October Term, 1994

ROBERT A. LESLIE,

Petitioner,

v.

WILLIAM C. LESLIE,

Respondent.

On Petition For A Writ Of Certiorari
To The Court Of Appeals
Of The State Of Colorado

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals of the State of Colorado (Opp. App. A) is reported at 886 P.2d 284 (Colo. App. 1994).

JURISDICTION

The judgment of the Court of Appeals of the State of Colorado was entered on April 21, 1994, and modified on denial of petition for rehearing on August 4, 1994. On January 17, 1995, the Supreme Court of the State of Colorado denied a petition for certiorari to the Colorado

Court of Appeals. The petition for writ of certiorari was filed in this Court on or about March 17, 1995, and was received by counsel for Respondent on March 20, 1995. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

This action arose from a will contest in Boulder County, Colorado, District Court. Both Petitioner Robert A. Leslie and Respondent William C. Leslie are the sons of the decedent, Robert W. Leslie. Petitioner is not a licensed attorney, and has appeared *pro se* throughout this proceeding and all related proceedings.

Respondent has filed this opposition pursuant to SUPREME COURT RULE 15.1 because of the many inaccurate statements and misrepresentations that Petitioner *pro se* has made in his petition. The Court should not presume that the petition has any merit merely because this Opposition has been filed. All of Petitioner's issues either do not implicate the jurisdiction of this Court, have not been preserved for Supreme Court review, or else are patently meritless.

The long history of convoluted proceedings in this matter had its genesis in a probate case opened in 1989, *In re Estate of Robert W. Leslie*, Boulder County (Colorado) District Court No. 89PR295, from which this proceeding arises. The decedent, Robert Wilson Leslie, left a will that divided his estate equally between his two sons and three grandchildren, so that Petitioner, the decedent's younger son, received only a one-fifth share of the estate.

The will was admitted to formal probate in 1989. Unhappy with the division of property, Petitioner filed pleadings in the formal testacy proceeding contending that the will was forged and objecting to its probate. A hearing was scheduled for October 12, 1989 on notice to all interested persons pursuant to COLO. REV. STAT. §§ 15-10-401(1)(a) and 15-12-403(1)(a) (1987). Respondent, as the proponent of the will, sent notice of the hearing to Petitioner by certified mail on September 29, 1989, and the receipt established that Petitioner received it on October 2, 1989.

The hearing was held as scheduled on October 12, 1989. Although Petitioner filed an objection, he did not appear at the hearing either in person or through counsel. At the hearing, the proponents of the will presented evidence that the decedent's signature was on the will, as well as an affidavit from a witness to the signature stating that the witnesses saw the decedent sign the will and declared it to be his will. The probate court ruled that because the will was self-proving, compliance with the signature and other requirements of execution were presumed unless there was evidence of fraud or forgery. Because Petitioner failed to present any evidence rebutting the authenticity or proper execution of the will, the probate court ordered it admitted to formal probate.

Petitioner appealed the order admitting the will to probate to the Colorado Court of Appeals, which affirmed. *Leslie v. Colorado National Bank* (Colo. App. No. 89CA2010, December 6, 1990), *cert. denied*, (Colo. No. 91SC45, April 15, 1991) (Opp. App. C). The Colorado Court of Appeals rejected Petitioner's argument that the will was invalid because the decedent had not initialed its

pages, and further found that Petitioner had ample notice of the October 1989 hearing under the Colorado Probate Code.

Petitioner then filed an independent action in the United States District Court for the District of Colorado, in which he attempted to relitigate the same issues that had been resolved against him in the state probate action. This action was dismissed for want of federal subject matter jurisdiction. *Robert A. Leslie v. Colorado Natl. Bank of Denver et al.*, Civil Action No. 91-S-2123 (D. Colo., September 29, 1992) (Opp. App. G). In dismissing the action, the district court also observed that "each of the issues that the Plaintiff seems to complain of has been previously litigated," and that "this court has no authority to rescind a probate order previously unsuccessfully appealed in the state court." (Opp. App. G at 21a).

Undaunted by two conclusive adjudications against him, Petitioner later filed another independent action, *Robert A. Leslie v. William A. Leslie*, Boulder County (Colorado) District Court No. 92CV1470, denominated as a "Complaint for Recession[sic] Based on Fraud and for Relief Based on Fraud." In that separate lawsuit, Petitioner named as defendants the other heirs of the Leslie estate, as well as their attorneys. In his complaint, Petitioner alleged that the decedent's will was "fraudulent," and had been perpetrated by the defendants, including the attorneys for the Leslie heirs. In essence, Petitioner reiterated his arguments, previously rejected by the probate court and Colorado Court of Appeals, that he had not received his proper share of the estate because a fraudulent will had been admitted to probate.

On the defendant's motion, Petitioner's fraud action was dismissed as barred by *res judicata*. Petitioner's appeal of that dismissal was likewise unsuccessful. The Colorado Court of Appeals held that the issues had been resolved against Petitioner in the earlier probate litigation, so that his claims were barred by *res judicata* and collateral estoppel. *Leslie v. Leslie* (Colo.App. No. 93CA0185, March 10, 1994) (not selected for official publication), *cert. denied*, (Colo. No. 94SC254, August 22, 1994) (Opp. App. E). The Court of Appeals also held that because Petitioner had never requested a hearing in the trial court, his claim that the dismissal of his complaint without a hearing denied him due process had not been preserved for review.

Administration of the Leslie estate continued in Boulder District Court. In December 1991, Colorado National Bank of Denver, as personal representative of the Leslie estate, petitioned the probate court for an order of final settlement and distribution, which was entered on December 11, 1991. Because of Petitioner's federal district court action, however, the probate court granted the personal representative leave to withhold distribution of the estate, and to apply for an additional order reimbursing the estate for the expense of defending the federal litigation. After the federal action was dismissed in September 1992, the personal representative requested a supplemental order of final settlement and distribution, of which Petitioner was given notice on January 29, 1993. Petitioner then filed a written objection to the personal representative's request for a supplemental order.

Although the probate court held a hearing on Petitioner's objection on February 24, 1993, he again failed to

appear either in person or through counsel. The probate court subsequently entered a Supplemental Order of Final Settlement and Distribution, dated February 24, 1993. The Supplemental Order dismissed all of Petitioner's objections, and charged his distributive share of the estate with the attorney fees and other costs that the personal representative incurred in defending against Petitioner's unsuccessful attempts to relitigate the validity of the will.

On appeal, the Colorado Court of Appeals again affirmed. *In re Estate of Leslie*, 886 P.2d 284 (Colo. App. 1994) (Opp. App. A). The court refused to review Petitioner's claims that the will was fraudulent and was improperly admitted to probate, as having already been resolved against him in the prior appeals. *Id.*, 886 P.2d at 285-86 (Opp. App. A at 3a). The Court of Appeals also affirmed the probate court's assessment of attorney fees and estate costs against Petitioner's distributive share, ruling that:

> [T]hroughout the extensive litigation of this matter, including two appeals, the trial court has noted the lack of substance and the groundlessness of petitioner's claims and defenses, thus implicitly finding that his numerous actions have been frivolous. . . .
>
> Much of petitioner's conduct in initiating and prosecuting needless and insubstantial litigation has resulted in the frustration of this basic purpose and the possible depletion of the assets of the estate. Accordingly, and in the light of the findings of the several courts which have been forced needlessly to consider this matter, we cannot say that the probate court here

> abused its discretion in awarding against the petitioner's distributive share the administrative costs and legal fees incurred by the estate in defending against the unsuccessful and groundless litigation in this and the two other cases that concerned, principally, the same issues that had been previously resolved.

Id., 886 P.2d at 288 (Opp. App. A at 8a-9a). The court also concluded that "Petitioner's other contentions are without merit." *Id.*

On January 17, 1995, the Colorado Supreme Court denied Petitioner's petition for writ of certiorari to the Colorado Court of Appeals. *In re Estate of Leslie* (Colo. No. 94SC515, January 17, 1995) (Opp. App. B).

SUMMARY OF ARGUMENT

The petition does not present any questions within the jurisdiction of the Supreme Court and thus does not merit Supreme Court review. Most of the issues raised in the petition present questions of purely state law; many of the issues pertain to prior state court appeals, and are thus outside Supreme Court jurisdiction. Petitioner *pro se* has failed to preserve any of his federal constitutional issues for review because they were raised for the first time in the state appellate courts or else are raised for the first time here. Even these issues had been adequately preserved for Supreme Court review, they are clearly meritless.

REASONS FOR DENYING THE WRIT

I. The petition does not raise any issues within Supreme Court jurisdiction.

Although the argument does not exactly track the list of issues presented, the petition appears to raise the following discrete issues:

(1) Petitioner was denied his Seventh Amendment right to a jury trial in the probate court testacy proceeding, and that the denial of a jury trial consequently denied him his right to due process and equal protection under the Fourteenth Amendment;

(2) The dismissal of Petitioner's complaint in *Leslie v. Leslie*, Boulder County District Court No. 92CV1470, violated the Colorado Rules of Civil Procedure and denied him due process of law;

(3) The probate court was biased against him in ordering the attorney fees and additional costs incurred by the Leslie estate in defending against his groundless litigation to be taxed against his distributive share of the estate;

(4) The probate court acted in excess of its jurisdiction in taxing the attorney fees and estate costs against his distributive share of the estate;

(5) COLO. REV. STAT. § 15-10-102(1)(c) (1987) violates Petitioner's right to a jury trial under the Seventh Amendment;

(6) The probate court's order taxing the attorney fees and estate costs against Petitioner's distributive

share of the estate "is in conflict with the published case law" (Pet. at A36);

(7) The probate court improperly charged Petitioner's share of the estate with the Petitioner's obligation to the decedent on certain promissory notes;

(8) The Colorado Court of Appeals' decision in *Leslie v. Leslie* (Colo. App. No. 93CA0185, March 10, 1994) (not selected for official publication), *cert. denied*, (Colo. No. 94SC254, August 22, 1994) (Opp. App. E) was not *res judicata* as to his subsequent claims in the probate court that the will was fraudulent;

(9) The purpose of COLO. REV. STAT. § 15-10-102(1)(c) (1987) to "promote a speedy and efficient system for settling the estate of the decedent and making distribution to his successors" violates Petitioner's right to due process of law;

(10) The Colorado Court of Appeals erred in finding that the six different grounds for dismissal of Petitioner's federal action "most assuredly constitute grounds for a finding of groundless and frivolous litigation";

(11) The Colorado Court of Appeals erred in finding that Petitioner's previously dismissed state action was groundless and frivolous; and

(12) The doctrine of equitable estoppel was improperly applied.

Of these multifarious issues, the only ones that conceivably raise clear questions of federal law within the jurisdiction of the Supreme Court are Petitioner's claims

that he was denied a jury trial under the Seventh Amendment in the probate court, and that the Colorado Probate Code is unconstitutional because it violates due process and the Seventh Amendment right to a jury trial. All of Petitioner's other issues are outside this Court's jurisdiction, either because they were not raised in a timely manner, or else because they raise only questions of state law.

A.

This Court lacks subject matter jurisdiction over any constitutional issues raised in Petitioner's two prior appeals because no timely petition for certiorari was filed in either of those cases.

The two prior unpublished decisions of the Colorado Court of Appeals were issued on December 6, 1990 and March 10, 1994 respectively. *See In re Estate of Leslie* (Colo. App. No. 89CA2010, December 6, 1990) (Opp. App. C); *Leslie v. Leslie* (Colo. App. No. 93CA0185, March 10, 1994) (not selected for official publication) (Opp. App. E). Certiorari was denied by the Colorado Supreme Court in each of these appeals on April 15, 1991 and on August 22, 1994 respectively. *See In re Estate of Leslie* (Colo. No. 91SC45, April 15, 1991) (Opp. App. D); *Leslie v. Leslie* (Colo. No. 94SC254, August 22, 1994) (Opp. App. F). Because Petitioner failed to seek timely review by certiorari in the Supreme Court in either of these two prior appeals, this Court lacks subject matter jurisdiction to consider any issue that was previously raised or could have been raised in them. Supreme Court Rule 13.1; 28

U.S.C. § 2101(c); *see FTC v. Minneapolis-Honeywell Regulator Co.*, 344 U.S. 206 (1952); *cf. In re Estate of Leslie*, 886 P.2d 284, 286 (Colo. App. 1994) (applying same rule to state appellate proceeding).

In particular, Petitioner's argument that the dismissal of his complaint in *Leslie v. Leslie*, Boulder County District Court No. 92CV1470, violated the Colorado Rules of Civil Procedure and thus denied him due process of law concerns only his prior appeal in *Leslie v. Leslie* (Colo. App. No. 93CA0185, March 10, 1994) (Opp. App. E), not the decision as to which he now seeks certiorari. Accordingly, because no timely petition was filed in that matter, these issues are not properly before this Court. *FTC v. Minneapolis-Honeywell Regulator Co., supra.*

Moreover, because unpublished decisions of the Colorado Court of Appeals have no precedential value, *see* COLO.APP.R. 35(f),[1] neither of these decisions would merit

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[1] Colorado Appellate Rule 35(f) provides, in pertinent part:

> **(f) Published Opinions of Court of Appeals.** A majority of all of the judges of the Court of Appeals shall determine which opinions of that court shall be selected for official publication. They shall be published in whatever official publication is designated by the Supreme Court. Those opinions selected for official publication shall be followed as precedent by the trial judges of the state of Colorado.
>
> No opinion of the Court of Appeals shall be selected for official publication unless it satisfies one or more of the following standards: (1) the opinion lays down a new rule of law, or alters or modifies an existing rule, or applies an established rule to a novel fact situation; (2) the opinion involves a legal issue of continuing public interest; (3) the opinion directs

Supreme Court review even if jurisdiction had been perfected.

B.

Petitioner also raises a number of state law issues that are not within Supreme Court jurisdiction. State law clearly and exclusively applies to the issues of the state probate court's jurisdiction and equitable power to order that Petitioner's distributive share of the estate be taxed with the attorney fees and additional estate costs

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attention to the shortcomings of existing common law or inadequacies in statutes; (4) the opinion resolves an apparent conflict of authority.

An opinion of the Court of Appeals not selected for official publication shall bear, on the title page, the legend, "NOT SELECTED FOR PUBLICATION."

The Colorado Court of Appeals has also adopted the following policy concerning citation of unpublished opinions:

POLICY OF THE COURT CONCERNING CITATION OF UNPUBLISHED OPINIONS

By majority vote of the Judges of the Colorado Court of Appeals the following policy was adopted:

Citation of unpublished opinions is forbidden with the following exceptions:

(1) unpublished opinions may be cited to explain the case history or to establish the doctrines of law of the case, *res judicata*, or collateral estoppel;

(2) this policy shall not apply to opinions that were designated as "Not Selected for Official Publication" and were announced between January 1, 1970 and November 1, 1975, but nevertheless were published in the Pacific Second Reporter.

BY THE COURT: Alan L. Sternberg, Chief Judge

Dated: April 28, 1984

incurred by the Leslie estate in defending against Petitioner's groundless litigation. State law also clearly governs the propriety of the probate court's exercise of discretion in ordering that the attorney fees and costs be taxed against Petitioner's distributive share. *See In re Estate of Leslie*, 886 P.2d at 286-87. No federal question of any kind is presented on this point.

Similarly, the propriety of the probate court's order charging Petitioner's distributive share with the promissory notes owed by Petitioner to the decedent, as well as the enforceability of those notes, are also questions that arise purely under state law, namely the Uniform Probate Code and Uniform Commercial Code as adopted in Colorado. *See generally* COLO. REV. STAT. § 4-3-101 *et seq.* (1992); COLO. REV. STAT. § 15-10-101 *et seq.* (1987). Inasmuch as the Colorado Court of Appeals relied on COLO. REV. STAT. § 13-17-102 (1987) in determining that Petitioner's dismissed state and federal actions were groundless and frivolous litigation, this, too, presents only an issue of state law.

Finally, the Colorado Court of Appeals' determination that the prior judgments against Petitioner were *res judicata* to his subsequent claims in the probate court that the will was fraudulent, along with the applicability of the doctrine of equitable estoppel, are also matters purely of state law.

Because every one of these issues involves purely a question of state law, or else Petitioner's objections to the state court's application of state law, they should not be considered on petition for writ of certiorari. *See International Longshoremen's Assn., AFL-CIO v. Davis*, 476 U.S.

380, 387 (1986); *Agins v. City of Tiburon*, 447 U.S. 255, 260 n.6 (1980).

II. Any constitutional issues raised in the petition have not been preserved for Supreme Court review.

A.

Petitioner raises a number of constitutional issues, all of them for the first time here. Hence, these issues have not been adequately preserved for review. In any event, the petition does not present any grounds for certiorari under SUPREME COURT RULE 10. None of these issues implicates either the jurisdiction of this Court or any reason to issue a writ of certiorari to the Colorado Court of Appeals.

Petitioner argues, in an indefinite way, that various actions of the probate court and the Colorado Court of Appeals violated his rights to due process and equal protection. Petitioner disregards SUPREME COURT RULE 14.1(h) by failing to specify the stage of the proceedings in which the questions sought to be reviewed were raised. The record shows that Petitioner's many "due process" claims were never raised in either the trial court, the Colorado Court of Appeals, or the Colorado Supreme Court, nor were they passed upon by any of those courts. Failure to preserve these issues below precludes their consideration by this Court on certiorari. *See Bankers Life & Cas. Co. v. Crenshaw*, 486 U.S. 71, 76-80 (1988); *Dewey v. Des Moines*, 173 U.S. 193, 198-200 (1899); *see also* SUPREME COURT RULE 14.1(h).

Petitioner's challenge to the constitutionality of COLO. REV. STAT. § 15-10-102(1)(c) was not raised in the probate court, nor was it raised in the Colorado Court of Appeals or in the Colorado Supreme Court. Even if it had been raised in the state appellate courts, questioning the constitutionality of a statute for the first time on appeal in a state court does not successfully preserve the issue for review in the Supreme Court. *See Board of Directors of Rotary Intl. v. Rotary Club of Duarte*, 481 U.S. 537, 550 (1987). Questioning the constitutionality of a state statute for the first time on petition for writ of certiorari also does not successfully raise the issue in this Court. *See Head v. New Mexico Bd. of Exmrs. in Optometry*, 374 U.S. 424, 433, n.12 (1963); *Tacon v. Arizona*, 410 U.S. 351, 352 (1973); *Monks v. New Jersey*, 398 U.S. 71, 72 (1970).

Because Petitioner did not seek review of the constitutionality of COLO. REV. STAT. § 15-10-102(1)(c) of the Colorado Probate Code on any ground in any of the state courts below, he has failed to preserve this issue for review. Hence, these issues, too, have not been preserved for Supreme Court review. *See Bankers Life & Cas. Co. v. Crenshaw, supra; Tacon v. Arizona, supra; Head v. New Mexico Bd. of Exmrs. in Optometry, supra.*

B.

As for any constitutional issues that Petitioner may actually have preserved in the courts below, they are clearly meritless.

Although Petitioner claims that various orders and statutes have denied him "due process" and "equal protection," he did not expressly allege in either the

Colorado Court of Appeals or Colorado Supreme Court that such alleged denials were denials of the "due process" or "equal protection" guaranteed by the Fourteenth Amendment to the United States Constitution. A generic reference to "due process" or "equal protection" is not sufficient to preserve a *federal* claim, *see Bankers Life & Cas. Co. v. Crenshaw, supra*, particularly where the state constitution contains similar provisions guaranteeing due process and equal protection of the laws. *See* COLO. CONST. art. II, §§ 6, 25. In the state appellate courts below, Petitioner did not expressly identify the federal constitution as the source of his alleged "due process" rights,[2] and does not now identify the precise manner in which he was denied either due process or equal protection under the federal constitution. Thus, even if Petitioner has adequately preserved his constitutional challenge, it is unclear whether he has presented an issue of federal or state law. *See Webb v. Webb*, 451 U.S. 493, 495-501 (1981); *Bankers Life & Cas. Co. v. Crenshaw, supra*. For this reason, too, certiorari should be denied.

Petitioner's only other issue that raises any federal question is his contention that his Seventh Amendment right to a jury trial was violated. Although Petitioner claims he was denied a jury trial in the probate court, this was because he never asked for one. COLO. REV. STAT. § 15-10-306(1) (1987), in fact, expressly provides that, "If

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[2] In a phrase repeated nine times in his Opening Brief in the Colorado Court of Appeals, Petitioner stated that "Petitioner's objections are directed at the illegal rulings of the Honorable Judge Santead[sic], and his denial of petitioner's due process rights." Petitioner did not identify the source of these "due process rights" as being either the federal or state constitution.

duly demanded, a party is entitled to trial by jury in a formal testacy proceeding and any proceeding in which any controverted question of fact arises as to which any party has a constitutional right to trial by jury." Notwithstanding his failure to "duly demand" a jury, Petitioner argues that this procedure violated his Seventh Amendment right to a jury trial, and that COLO. REV. STAT. § 15-10-102(1)(c) of the Colorado Probate Code also violates his Seventh Amendment rights. Because the Seventh Amendment has been construed not to apply to the States under the Fourteenth Amendment, these arguments are without merit. *Edwards v. Elliott*, 88 U.S. (21 Wall.) 532, 557 (1874); *see Howlett v. Rose*, 496 U.S. 356, 383 n.17 (1990); *see also Firelock, Inc. v. District Court*, 776 P.2d 1090, 1096 (Colo. 1989).

C.

This is a case of a stubborn and abusive *pro se* litigant who does not understand judicial procedure and who refuses to abide by the judgments and orders rendered against him. The probate court found that Petitioner's claims were groundless and frivolous, and the Court of Appeals upheld this finding. Although two of three judges of the division of the Colorado Court of Appeals declined to find Petitioner's appeal frivolous under COLO.APP.R. 38(d), it is obvious that his appeal was replete with arguments that have no support in law or fact. His petition for writ of certiorari to this Court is simply more of the same. Even if his issues were not clearly meritless, they are either outside Supreme Court jurisdiction, or else have not been preserved for review.

Consequently, there is nothing of substance in the petition to merit this Court's attention.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be DENIED.

Respectfully submitted,

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DATED: April 20, 1995

APPENDIX

APPENDIX A

COLORADO COURT OF APPEALS April 21, 1994
No. 93CA0409.

IN THE MATTER OF THE ESTATE OF ROBERT W. LESLIE, Deceased.

ROBERT A. LESLIE,

Petitioner-Appellant,

v.

WILLIAM C. LESLIE, MARGARET A. LESLIE, DAVID LESLIE,

Respondents-Appellees,

and

WALTER BARNES, LLOYD ROWLAND, AND BRADLEY, CAMPBELL, CARNEY & MADSEN,

Appellees.

[886 P.2d 284]

APPEAL FROM THE DISTRICT COURT OF BOULDER COUNTY
Honorable Morris W. Sandstead, Jr., Judge
No. 89PR295

Division II APPEAL DISMISSED IN PART
Opinion by JUDGE JONES. AND ORDER AFFIRMED
Metzger and Ney, JJ., concur

As Modified on Denial of Petition for Rehearing of Respondents-Appellees, August 4, 1994.*

Petition for Rehearing of Plaintiff-Appellant Denied, August 4, 1994.

*Metzger, J., would grant rehearing.

In this proceeding for administration of the estate of the decedent, Robert Wilson Leslie, petitioner, Robert A.

Leslie, appeals the supplementary order of final settlement and distribution entered by the probate court. We dismiss the appeal in part and affirm the order.

Initially, we note that the record reflects that two of the respondents set forth in the caption, Margaret A. Leslie and David Leslie, were not represented by counsel before the probate court. Also, they received no notice of this appeal against them. Accordingly, the appeal is dismissed as to them. C.A.R. 3(a).

Additionally, Walter Barnes, Lloyd Rowland, and Bradley, Campbell, Carney & Madsen (a law firm), set forth as appellees by petitioner, are not reflected in the record as parties of interest in the decedent's estate and are not proper parties to this appeal. Accordingly, this appeal is dismissed as to those parties. C.A.R. 3(a).

I.

Petitioner initially contends that the underlying will is invalid as fraudulent and that the probate court, therefore, erred in entering its orders of final settlement and distribution. We disagree.

In an earlier appeal arising out of this estate matter, *Leslie v. Colorado National Bank*, (Colo.App. No. 89CA2010, December 10, 1993) (not selected for official publication), a division of this court concluded that the will had been properly executed and, thus, affirmed the orders of the probate court admitting the decedent's will to formal probate. *See O'Brien v. Wallace*, 145 Colo. 291, 359 P.2d 1029 (1961). There, the division noted, with particularity, that petitioner was given sufficient notice of the hearing

of October 12, 1989, on the issue of whether the will should be admitted to probate. *See* §§ 15-10-401(1)(a) and 15-12-403(1)(a), C.R.S. (1987 Repl.Vol. 6B). Petitioner attempts, once again, to have that issue reviewed here. A critical part of petitioner's claim in the previous case was the allegation that the will was fraudulent. There, both the trial court and this court resolved those issues against petitioner.

Matters resolved by that appeal may not be reviewed again here. *See Dando Co. v. Mangini*, 107 Colo. 170, 109 P.2d 1055 (1941).

II.

Petitioner also contends that the probate court erred in charging certain litigation and administration expenses against his share of the distribution of the estate. We perceive no error.

The record reflects that final settlement and distribution of the estate here was delayed, and additional fees and costs were incurred, by petitioner's unsuccessful attempts to challenge the validity of the will and its final administration. We have noted above petitioner's challenge in this court of earlier orders entered in this matter by the probate court. Following our disposition there, petitioner's petition for certiorari was denied by the Colorado Supreme Court on April 15, 1991.

Thereafter, in 1991, petitioner filed an action in the United States District Court for the District of Colorado (Civil Action No. 91-S-2123) challenging the validity of

the will. That matter was dismissed on September 29, 1992.

Following that dismissal, petitioner filed a separate civil action in the Boulder County District Court, No. 92CV1470, apparently based on fraud, challenging the validity of the will. That action was dismissed on numerous grounds. Petitioner appealed dismissal of that action to this court. A division of this court affirmed the dismissal, determining, *inter alia*, that petitioner had failed to request a hearing on respondents' motions to dismiss, that the issues raised on appeal had been resolved in the earlier probate litigation, and that the appeal was barred by *res judicata*. *Leslie v. Leslie*, (Colo.App. No. 93CA0185, March 10, 1994) (not selected for official publication).

Finally, on or about February 24, 1993, after a hearing on the personal representative's petition here, and petitioner's objections thereto, *see* § 15-12-1001, C.R.S. (1987 Repl.Vol. 6B), the supplemental order of final settlement and distribution was entered. Although petitioner was given notice thereof in January 1993, he chose not to be present at the hearing.

As a part of this order, the probate court stated: "All personal representative and attorney fees in excess of those ordered to be paid out of the general estate [, *i.e.*, fees attributable to his unsuccessful attempts to challenge the will and the orders of the various courts involved,] were and are charged against the distributive share of Dr. Robert A. Leslie, M.D."

This order followed from a part of the original order for final settlement and distribution, dated December 11,

1991. In that order, in anticipation of the other cases to be filed by petitioner covering issues already litigated, the probate court stated that should such cases be filed, the personal representative was authorized to hold up the final distribution but that, in such event, the personal representative "may apply to this Court for an additional Order or Orders regarding the payment and burden of additional expense."

As to whether the litigation and administration expenses attributable to the attempts of the petitioner to challenge the will and its final administration were appropriately charged against the petitioner's distributive share, there is no Colorado statutory or case law. However, we are persuaded by the cases from other jurisdictions that fees and expenses may be so collected.

In *Webbe v. First National Bank & Trust Co.*, 93 Ill.Dec. 886, 487 N.E.2d 711 (Ill.Dist.Ct.App.1985), one of several beneficiaries of a trust sued unsuccessfully in a suit that the court found to be "groundless and brought without reasonable cause." The appellate court, in upholding the charging of resultant legal fees and administrative costs against only that beneficiary's distributive share, stated:

> [W]hen one of several beneficiaries brings essentially groundless and unsuccessful litigation against a trustee the purpose of which was to benefit only himself, no reason suggests itself why the other beneficiaries, who did not join with him, sought no relief and had no voice in the conduct of the case, should share the expense with the initiating beneficiary. If such were not the case, a beneficiary could assault will and trust provisions attempting to increase his individual shares secure in the knowledge

> that, if he was unsuccessful, the cost would be borne by the other beneficiaries equally and not recovered solely out of the share of the party seeking to further his own ends. This would not seem to be just.

Webbe v. First National Bank & Trust Co., supra, 93 Ill.Dec. at 889, 487 N.E.2d at 714. *See Dayton v. Conger,* 448 So.2d 609 (Fla.Dist.Ct.App.1984); *In re Estate of Campbell,* 46 Haw. 475, 382 P.2d 920 (1963); *Boston Safe Deposit & Trust Co. v. Stone,* 348 Mass. 345, 203 N.E.2d 547 (1965); *In re King's Estate,* 336 Pa. 1, 7 A.2d 297 (1939).

The Colorado Probate Code is equitable in nature. Section 15-10-103, C.R.S. (1987 Repl.Vol. 6B). It does not, however, specifically provide for payment of administrative expenses and attorney fees from an individual's distributive share, even if that heir has individually caused such costs to be incurred. Nevertheless, we conclude that the probate court's order of payment may be upheld here under the circumstances attending petitioner's relentless pursuit of the very same issues in three separate trial courts, in both the state and federal jurisdictions, and in three appeals to this court.

Section 13-17-102, C.R.S. (1989 Repl.Vol. 6A), provides that in any civil action "of any nature," a party asserting a claim or defense may have fees imposed against such party if the claim or defense being asserted is frivolous and lacking in substantial justification. Thus, the costs imposed by the probate court here must be viewed in the context of findings by the probate court, and the other courts involved, concerning whether the

extraneous litigations unsuccessfully pursued by petitioner and leading to the additional costs were substantially lacking in justification.

In the federal court action, the court set forth six grounds for dismissal, any one of which could reasonably justify a finding that the action was frivolous and groundless. The cumulative effect of the six grounds would, in a Colorado state court, most assuredly constitute grounds for a finding of groundless and frivolous litigation.

In the separate Boulder district court action, the trial court summarily dismissed petitioner's action, adopting as justification all of the grounds set forth by the respondents as to why the complaint should be dismissed. One such ground was as follows:

> The complaint, taken together with the judgment of the Colorado Court of Appeals in Case No. 89CA2010, and with the federal district courts' orders of dismissal [there was also a matter filed by petitioner in, and dismissed by, the United States District Court for the Northern District of Oklahoma (Civil Action No. 92-C-102-E), challenging the validity of the will], reveals that the plaintiff has made no inquiry into the facts or the law, that the plaintiff does not believe that the pleading is 'well grounded in fact,' that the legal theory asserted in the complaint is not based on existing legal principles or a 'good faith argument' for the modification of existing law, and that the pleading was filed for the purpose of causing delay and harassment and an increase in the cost of litigation, *see Henry v. Kemp*, 829 P.2d 505 (Colo.App. 1992); the plaintiff should thus be required to

pay the defendants' fees and costs pursuant to C.R.C.P. 11 and C.R.S. § 13-17-102.

Thus, by inference, the trial court found that action to be frivolous and groundless. We have noted above that on appeal of that action a division of this court affirmed the trial court, although it declined to award attorney fees for that separate appeal.

Finally, throughout the extensive litigation of this matter, including two appeals, the trial court has noted the lack of substance and the groundlessness of petitioner's claims and defenses, thus implicitly finding that his numerous actions have been frivolous.

The General Assembly promulgated the Colorado Probate Code for the basic purpose of promoting "a speedy and efficient system for settling the estate of the decedent and making distribution to his successors." Section 15-10-102(2)(c), C.R.S. (1987 Repl.Vol. 6B); *In re Estate of Dire*, 851 P.2d 271 (Colo.App.1993).

Much of petitioner's conduct in initiating and prosecuting needless and insubstantial litigation has resulted in the frustration of this basic purpose and the possible depletion of the assets of the estate. Accordingly, and in the light of the findings of the several courts which have been forced needlessly to consider this matter, we cannot say that the probate court here abused its discretion in awarding against the petitioner's distributive share the administrative costs and legal fees incurred by the estate in defending against the unsuccessful and groundless litigation in this and the two other cases that concerned, principally, the same issues that had been previously

resolved. *See Webbe v. First National Bank & Trust Co., supra.*

We conclude that petitioner's other contentions are without merit. We decline to award attorney fees and costs as to this appeal.

The order of the probate court is affirmed. This appeal is dismissed as to Margaret A. Leslie, David Leslie, Walter Barnes, Lloyd Rowland, and Bradley, Campbell, Carney & Madsen.

METZGER and NEY, JJ., concur.

APPENDIX B

SUPREME COURT, STATE OF COLORADO
No. 94SC515
CERTIORARI TO THE COLORADO COURT OF APPEALS,
CASE NO. 93CA0409
DISTRICT COURT, BOULDER COUNTY, NO. 89PR295

ORDER OF COURT

ROBERT A. LESLIE,

Petitioner,

v.

WALTER BARNES, LLOYD ROWLAND, BRADLEY, CAMPBELL, CARNEY & MADSEN, P.C., WILLIAM C. LESLIE, MARGARET ANN LESLIE, AND DAVID LESLIE,

Respondents.

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals, and after reviewing the record, the briefs, and the judgment of said Court of Appeals,

IT IS THIS DAY ORDERED that said Petition for Writ of Certiorari shall be, and same hereby is, DENIED.

BY THE COURT, EN BANC, JANUARY 17, 1995.

APPENDIX C

COLORADO COURT OF APPEALS December 6, 1990
No. 89CA2010 NOT SELECTED FOR PUBLICATION

IN THE MATTER OF THE ESTATE OF ROBERT WILSON LESLIE, Deceased.

ROBERT A. LESLIE,

Petitioner-Appellant,

v.

COLORADO NATIONAL BANK OF DENVER, Personal Representative, and WILLIAM C. LESLIE, MARGARET ANN LESLIE, DAVID LESLIE, AND ROBERT J. LESLIE,

Respondents-Appellees.

APPEAL FROM THE DISTRICT COURT OF BOULDER COUNTY
Honorable Roxanne Bailin, Judge
No. 89PR295

Division I JUDGMENT AFFIRMED
Opinion by JUDGE TURSI
Pierce and Plank, JJ., concur

Petitioner, Robert Andrew Leslie, a son of the decedent, appeals from the trial court order admitting his father's 1968 will to formal probate. We affirm.

Petitioner filed pleadings in the formal testacy proceedings objecting to the probate of the will, asserting that the will was forged. A hearing on the matter was subsequently set for October 12, 1989. The record shows that the proponents of the will sent notice of the hearing to petitioner both by regular mail and by certified mail on September 29, 1989, and the certified mail return receipt card indicates that the notice was delivered to petitioner on October 2, 1989.

The hearing was held as scheduled on October 12, 1989, although petitioner failed to appear for the hearing. The will, which was self-proving, had previously been filed with the court. *See* § 15-11-504, C.R.S. (1987 Repl. Vol. 6B). At the hearing, the proponents of the will also presented testimony indicating that the decedent's signature was on the will, as well as an affidavit from one of the witnesses to the will stating that the witnesses saw the decedent sign the will and that the decedent at that time declared it to be his will.

The trial court properly ruled that, because the will was self-proved, compliance with signature and other requirements of execution were presumed unless there was evidence in rebuttal showing fraud or forgery. *See* § 15-12-406(2), C.R.S. (1987 Repl. Vol. 6B). Although petitioner raised the issue of fraud or forgery in his pleadings, no evidence was presented at the hearing rebutting the validity of the will. Accordingly, since the will was properly executed as a matter of law, the trial court properly ordered that the will be admitted to formal probate. *See O'Brien v. Wallace*, 145 Colo. 291, 359 P.2d 1029 (1961).

Contrary to petitioner's argument, there is no critical defect in the will by virtue of the fact that the attestation clause erroneously states that the decedent has initialed the first four pages of the will. Such initials are not required for a valid will, and the erroneous recital in the attestation clause does not rebut the presumption of proper execution from the remaining recitals in the attestation clause. *See* § 15-11-502, C.R.S. (1987 Repl. Vol. 6B); *Brock v. Erickson*, 28 Colo. App. 555, 475 P.2d 346

(1970); 2 W. Bowe & D. Parker, PAGE ON WILLS § 19.141 (1960).

The trial court also properly rejected petitioner's argument that he was not given sufficient notice of the hearing under the Colorado Probate Code. Notwithstanding petitioner's assertion that he had only six days actual notice in advance of the hearing, the record shows delivery of notice to petitioner or his agent ten days in advance of the hearing, and, in any event, the Colorado Probate Code requires only that notice be given by mailing such ten days in advance of the hearing. *See* §§ 15-10-401(1)(a) & 15-12-403(1)(a), C.R.S. (1987 Repl. Vol. 6B).

Petitioner's remaining contentions are without merit.

Order affirmed.

JUDGE PIERCE and JUDGE PLANK concur.

APPENDIX D

SUPREME COURT, STATE OF COLORADO
CASE NO. 91SC45
CERTIORARI TO THE COLORADO COURT OF APPEALS
NO. 89CA2010
DISTRICT COURT, BOULDER COUNTY, 89PR295

ORDER OF COURT

IN THE MATTER OF THE ESTATE OF ROBERT WILSON LESLIE, Deceased.

ROBERT A. LESLIE,

Petitioner,

v.

COLORADO NATIONAL BANK OF DENVER, Personal Representative, and WILLIAM C. LESLIE, MARGARET ANN LESLIE, DAVID LESLIE, and ROBERT J. LESLIE,

Respondents.

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals, and after reviewing the record, the briefs, and the judgment of said Court of Appeals,

IT IS THIS DAY ORDERED that said Petition for Writ of Certiorari shall be, and same hereby is, DENIED.

BY THE COURT, EN BANC, APRIL 15, 1991

APPENDIX E

COLORADO COURT OF APPEALS March 10, 1994
No. 93CA0185 NOT SELECTED FOR PUBLICATION

ROBERT A. LESLIE,

Plaintiff-Appellant,

v.

WILLIAM C. LESLIE, MARGARET ANN LESLIE, DAVID LESLIE, and BRADLEY, CAMPBELL, CARNEY & MADSEN, P.C.,

Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF BOULDER COUNTY
Honorable Morris Sandstead, Judge
No. 92CV1470

Division V JUDGMENT AFFIRMED
Opinion by JUDGE HUME
Ruland and Casebolt, JJ., concur

Plaintiff, Robert A. Leslie, appeals the dismissal of his claim challenging the admission of his deceased father's will to probate. We affirm.

Plaintiff challenged his father's will as fraudulent and objected to its admission to formal probate. However, he neither attended a hearing scheduled to consider his challenge nor did he present any evidence to support his allegations, and the will was admitted into probate. After plaintiff unsuccessfully appealed the admission of the will to probate, he subsequently initiated this separate civil action seeking to attach the order admitting the will to probate on the basis of fraud.

I.

Plaintiff first contends that the trial court denied him due process by dismissing his claim without conducting a hearing. We disagree.

A trial court has discretion in determining the necessity of holding oral argument or an evidentiary hearing prior to ruling on a motion. If oral argument is neither requested by a party nor ordered by the court, a court must determine the motion based upon its own merits and any supporting or opposing briefs submitted. *Platte River Power Authority v. Nelson*, 775 P.2d 82 (Colo. App. 1989); C.R.C.P. 121 § 1-15(4).

Here, the record does not reflect that plaintiff requested a hearing in either of his two responses to defendant's motion to dismiss. Hence, we do not address any contentions of error asserted for the first time on appeal. In addition, we perceive no denial of fundamental fairness in the court's ruling on the motion to dismiss after considering the written materials submitted.

II.

Plaintiff next contends that the order admitting the will to probate should be revoked based upon his claim that the will was not properly executed, that it conflicts with a declaration which the testator made within months of his death, and that it is contrary to his father's wishes because the beneficiaries in the two purported wills differed drastically. He also asserts that the will was the result of undue influence and that revocation is

warranted because of a beneficiary's behavior both before and after his father's death. We disagree.

Plaintiff challenged whether the will was properly executed in his earlier action and is, therefore, barred from raising it in this action.

Res judicata bars a second action on a claim previously litigated when there is a final judgment and identify of the subject matter, claims for relief, and parties to the action. *Res judicata* bars all claims that were actually litigated in an earlier proceeding and any claims that should have been raised in that proceeding, but were not. Collateral estoppel bars relitigation of an issue if it is identical to one actually and necessarily adjudicated at a prior proceeding; if there was a final judgment on the merits; and if the party against whom estoppel is asserted had a full and fair opportunity to litigate the issue in the prior proceeding. Collateral estoppel is conclusive in a subsequent action between the parties, whether that action is for the same or a different claim. *Denver v. Block 173 Associates*, 814 P.2d 824 (Colo. 1991).

The determination of issues in probating a will is an adjudication on the merits. *Glenn v. Mitchell*, 71 Colo. 394, 207 P. 84 (1922).

Here, plaintiff raised some of the theories supporting his contention that the will had not been properly executed in his written opposition to its admission to probate. Therefore, he had an opportunity to litigate those theories in the probate court, but did not do so. Despite plaintiffs' claims as to its invalidity, he [sic] will has been finally determined to be valid. Accordingly, we conclude that plaintiff was properly precluded from relitigating

both those claims and theories which he had previously raised and those which had been raised, in the earlier proceedings, but which should then have been asserted.

III.

Lastly, defendants request that attorney fees and costs be imposed against plaintiff for bringing this appeal. However, since plaintiff's conduct appears neither egregious nor to have been unequivocally pursued in bad faith, we disagree that sanctions are appropriate here. *See Wood Brothers Homes, Inc. v. Howard*, 862 P.2d 925 (1993).

The judgment is affirmed.

JUDGE RULAND and JUDGE CASEBOLT concur.

APPENDIX F

SUPREME COURT, STATE OF COLORADO
CASE NO. 94SC254
CERTIORARI TO THE COLORADO COURT OF APPEALS
NO. 93CA0185
DISTRICT COURT, BOULDER COUNTY, 92CV1470

ORDER OF COURT

ROBERT A. LESLIE,

Petitioner,

v.

WILLIAM C. LESLIE, MARGARET ANN LESLIE, DAVID LESLIE, AND BRADLEY, CAMPBELL, CARNEY & MADSEN, P.C.,

Respondents.

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals, and after reviewing the record, the briefs, and the judgment of said Court of Appeals,

IT IS THIS DAY ORDERED that said Petition for Writ of Certiorari shall be, and same hereby is, DENIED.

BY THE COURT, EN BANC, August 22, 1994.

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Daniel B. Sparr

CIVIL ACTION NO. 91-S-2123

ROBERT A. LESLIE,

Plaintiff,

v.

COLORADO NATIONAL BANK OF DENVER, executor with will annexed and as devisee, WILLIAM C. LESLIE, MARGARET ANN LESLIE, DAVID LESLIE, ROBERT J. LESLIE, WALTER BARNES, LLOYD ROWLAND, and DOES I through X, as though set out individually,

Defendants.

DISMISSAL ORDER

THIS MATTER comes before the court on numerous motions by all of the Defendants for judgment on the pleadings or for dismissal, among other things.

A motion for judgment on the pleadings under Fed.R.Civ.P. 12(c) is treated as a motion to dismiss under Fed.R.Civ.P. 12(b)(6). *Mock v. T.G. & Y. Stores Co.*, 971 F.2d 522, ___, 1992 WL 171673 * 5 (10th Cir. July 24, 1992); *Bishop v. Federal Intermediate Credit Bank of Wichita*, 908 F.2d 658, 663 (10th Cir. 1990). A complaint should be dismissed only when it appears that the plaintiff can prove no set of facts in support of the claims that would entitle the plaintiff to relief, even when all well-pleaded allegations in the complaint are accepted as true and

construed in the light most favorable to the plaintiff. *Mock*, ___ F.2d ___, 1992 WL 171673 at * 5.

The court, having reviewed the motions, the briefs filed in opposition, the applicable law, and being fully advised in the premises, finds and concludes that dismissal is required for several reasons: first, the court lacks jurisdiction over this civil action because complete diversity is lacking, no legitimate federal question is alleged, and the proper jurisdictional amount in controversy is not alleged; second, some Defendants named in the caption have no allegations made against them in the complaint while some Defendants who have been served with the complaint are not named in the caption; third, each of the issues that the Plaintiff seems to complain of has been previously litigated; fourth, this court has no authority to rescind a probate order previously unsuccessfully appealed in the state court or to grant the Plaintiff the other relief he seeks; and finally, the Plaintiff fails to state any valid claim for relief against any of these Defendants.

As to the Defendants' requests for Rule 11 sanctions, the court declines to impose sanctions against the Plaintiff at this time. However, the Plaintiff is put on notice that his continued pursuit of these claims in federal court may well be considered unwarranted, in bad faith, and subject to sanctions.

Accordingly, IT IS ORDERED that this civil action is DISMISSED.

DATED AT DENVER, COLORADO, this 29th day of September, 1992.

BY THE COURT:

/s/ Daniel B. Sparr
United States District Judge